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# **Committee on Agribusiness**

**March 7, 2007  
9:00am-3:00pm  
28 HOB**



# **The Florida House of Representatives**

## **Environment & Natural Resources Council**

### **Committee on Agribusiness**

**Marco Rubio**  
**Speaker**

**Denise Grimsley**  
**Chair**

Wednesday, March 7, 2007  
9:00 – 3:00 p.m.  
28 House Office Building

- I. Call to Order
- II. Roll Call
- III. Consideration of HB 93 by Representative Robaina – Wrecker Services
- IV. Consideration of HB 245 by Representative Troutman – Exemptions from the Tax on Sales, Use, and Other Transactions
- V. Consideration of HB 595 by Representative Frishe – Telephone Solicitation
- VI. Consideration of HB 651 by Representative Boyd – Department of Agriculture and Consumer Services
- VII. Greetings from the Florida FFA Association – Sarah Burleson, President
- VIII. Closing remarks by Chair
- IX. Rise

(Committee will break for lunch from 12-1:00 p.m. and reconvene at 1:00 p.m. if needed)



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS - Revised

**BILL #:** HB 93                      Wrecker Services  
**SPONSOR(S):** Robaina and others  
**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>		Reese <i>AR</i>	Reese <i>AR</i>
2) <u>Environment &amp; Natural Resources Council</u>			
3) <u>Policy &amp; Budget Council</u>			
4) _____			
5) _____			

### SUMMARY ANALYSIS

An estimated 1,400 wrecker operators will be subject to the regulation proposed by this bill, and more than 7,000 trucks are registered as wreckers with the state Department of Highway Safety and Motor Vehicles (DHSMV).

This bill creates state regulation of wrecker operators. The bill: requires annual registration of wrecker companies with the state Department of Agriculture and Consumer Services (DACS); requires certification and continuing education of tow-truck operators; creates a seven-member Wrecker Operator Advisory Council to approve curricula and course providers; directs DACS, in consultation with the council, to issue rules implementing the new requirements; provides for prohibited acts and penalties; establishes an annual registration fee of \$495 for a wrecker company; specifies that unregistered wrecker companies may not be on the wrecker allocation lists used by law enforcement officers; and exempts from the regulatory provisions businesses which derive at least 80 percent of gross sales from repairs to motor vehicles and licensed automobile dealers.

The bill also specifies that tow trucks shall be required to have only one tag, to be placed on the front of the vehicles, and clarifies that vessels parked without permission on real property also may be towed and held for lien. This bill does not alter the authority of local governments to set maximum rates for towing. This bill requires that wrecker operators accept at least two of these forms of payment: cash (or cash equivalent), personal checks, or credit cards.

This bill creates a number of misdemeanor and felony offenses, primarily offenses that would be committed by wrecker operators. See "Infractions and Criminal Offenses Created By This Bill" starting on page 7.

This bill authorizes nine additional FTEs to DACS and appropriates \$693,000 from the General Inspection Trust Fund for the purposes of implementing this act. The Criminal Justice Estimating Conference has not yet scheduled the bill to review its impact on the prison system.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** HB 93 authorizes the creation of the Wrecker Operator Advisory Council within DACS to assist the agency with the technical aspects of regulating the towing industry. The Council also is charged with approving curricula for certification and continuing education programs, and determining if out-of-state wrecker certification courses are substantially equivalent to Florida courses. Also, DACS is given 9 FTEs and additional rulemaking authority to implement the bill's provisions.

**Ensure lower taxes:** HB 93 creates a \$495 annual registration fee for most wrecker companies in the state of Florida.

**Safeguard individual liberty:** To continue operating a wrecker business, the bill requires that most wrecker companies register and that most wrecker operators undergo training and continuing education to be certified and thus continue in employment. Additionally, owners and executive managers of most wrecker companies must be fingerprinted and undergo criminal background checks.

**Promote personal responsibility:** This bill creates criminal offenses for wrongful conduct.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Currently, the primary business regulations on the wrecker industry are proper registration of vehicles, as described in chapter 320, F.S., and liability insurance coverage in s. 324.021 and s. 627.7415, F.S. In addition, many local governments require wrecker companies to obtain business tax receipts for operation of a business, pursuant to chapter 205, F.S.

Over the years, concerns have increased over so-called "gypsy wreckers" operating without liability insurance, whose vehicles are improperly registered and ill-equipped to tow vehicles, and who prey on stranded motorists, tourists, and motorists who illegally park their vehicles.

##### **Effect of Proposed Changes**

HB 93 creates chapter 508, F.S. – Wrecker Services, which is section 1 of the bill. It creates a comprehensive structure for the registration of wrecker companies and the certification and continuing education for the persons who drive the tow trucks (wrecker operators), and establishes penalties. These regulatory responsibilities are assigned to DACS, assisted by a new seven-member Wrecker Operator Advisory Council.

The bill provides, with some exceptions, that all wrecker companies must be registered in Florida. Annual registration is a prerequisite for obtaining a local business tax receipt and for participating in the wrecker allocation call programs.

Exempt from these requirements are persons regularly engaged in the business of transporting mobile homes; motor vehicle repair shops deriving 80 percent of their business from repairs; franchised motor vehicle dealers; recovery or repossession agents; and any person performing wrecker services on behalf of a religious organization that holds a current exemption from federal taxation, or that is not required to apply for recognition of its exemption under the Internal Revenue Code.

##### **Role of the Wrecker Operator Advisory Council**

The bill creates a Wrecker Operator Advisory Council (Council) within DACS. The Council consists of 7 members who must be Florida residents: 6 appointed by the Commissioner of Agriculture and the

seventh being the Executive Director of the Professional Wrecker Operators of Florida as an ex-officio but voting member. Three of the Commissioner's appointees must have been ultimate equitable owners of a wrecker company for at least 5 years; one must be a wrecker operator with at least five years of experience; and two are lay persons. Of the initial appointees, two wrecker company owners and one lay person would serve 2-year terms and the rest 4-year terms; all subsequent appointees would serve 4-year terms. Members may be reappointed for additional terms, but may not exceed 8 years of consecutive service. By the year 2013, the industry appointees also must meet the registration or certification requirements. The Council selects its chair and vice chair, and all members serve without compensation except for travel reimbursement and per diem pursuant to s. 112.061, F.S.

The bill provides the Council with significant authority. The Council will:

- Approve the certification courses for wrecker operators, prescribe the curricula, and approve each organization proposing to offer the courses.
- Approve the instruction, training, and examination for specialized wrecker services before they can be endorsed for a wrecker certification.
- Approve certification training in other states for the purposes of substitution, and determine whether such training is substantially equivalent to Florida's approved wrecker-operator courses.
- Review the rules promulgated by DACS to implement chapter 508, F.S., and advise the agency on wrecker industry standards, practices and other matters requiring technical expertise.

#### DACS's role

DACS has the responsibility to manage and enforce the wrecker company registration and wrecker operator certification programs. The agency has both general and specific rulemaking authority to implement the provisions of chapter 508, F.S. DACS will maintain records, issue the certification cards and registration approvals or denials, select the certification training organizations, notify DHSMV based on the Council's approval, and inspect the records of wrecker companies. It is required to keep and store all records of the Council and to provide administrative support and staff.

#### Registration Process and Requirements

The bill provides for an annual registration fee of \$495 per company. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted and must bear the cost of fingerprinting. General employees are not required to be fingerprinted. Applicants must pay the Florida Department of Law Enforcement a state fingerprint processing fee, and an additional fee for federal processing will be charged. DACS will issue a certificate with a number to the registrant. The certificate must be displayed in a conspicuous place in the company's place of business, and any company advertisement must bear the registration number. For the purposes of the bill, the term "advertisement" means a printed or graphic statement made in a newspaper or other publication or contained in any notice, handbill, or sign, including signage on a vehicle, flyer, catalog, or letter.

In addition, registered wrecker companies are required to certify to DACS that they carry the additional commercial motor vehicle liability insurance as currently required under s. 627.7415, F.S.

Annual renewals are subject to a \$25 late fee. Unless local licensing requirements are met and maintained, and the company can present proof of the additional commercial vehicle liability insurance, a wrecker company may not renew its registration.

DACS may deny or refuse registration renewal if:

- the wrecker company does not meet or adhere to registration requirements;
- the owners or executive managers have been convicted of a felony within the last 10 years;
- the owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, motor vehicle theft, car jacking, chop shops, parts and

accessories records, airbags, overcharging for repairs or parts, or towing or storage requirements;

- the company fails to pay fines or penalties imposed under the new law;
- the company has an action pending in any jurisdiction for violation of the new law; or
- the company has a judgment against it for violation of the new law.

A wrecker company is required to maintain records of its wrecker services for at least 12 months at the principal place of business. It also must maintain records on each of its wrecker operators sufficient to demonstrate that the operator has successfully completed an approved wrecker operator continuing education course and is certified to perform wrecker services. These records must be maintained at the principal place of business for as long as the operator is employed by the wrecker company and for at least six months after. Organizations approved to conduct wrecker operator certification courses or continuing education courses are also required to maintain records for at least five years on persons who complete the courses. DACS is authorized to enter the place of business for the purpose of examining the records.

#### Training and Certification Process

In addition to wrecker company registration, the bill requires certification of wrecker operators. DACS must establish a certification program including certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. DACS also must require the courses to issue appropriate certificates and cards acknowledging completion of certification requirements. DACS is authorized to adopt rules providing for issuance of certification to operators from different states who have met substantially similar certification requirements. Certification programs created by DACS, and those of other jurisdictions taken in lieu of Florida certification programs, must be approved by the Wrecker Operator Advisory Council.

#### Prohibited acts and penalties

Wrecker companies, wrecker operators, or other employees or agents of the company are prohibited from:

- Charging rates in excess of those set by local ordinance;
- Violating the laws governing the FHP wrecker allocation system;
- Violating the laws governing the local wrecker allocation system;
- Violating the laws governing liens for towing or storing vehicles and vessels;
- Violating the laws governing towing, removing, or storing vehicles and vessels;
- Refusing to allow a law enforcement officer to inspect a towing and storage facility;
- Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
- Allowing an operator to provide specialized services without the proper endorsement; or
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

HB 93 also creates a number of administrative and criminal penalties related to chapter 508, F.S., requirements. The criminal penalties are more fully described below. Among the administrative penalties, DACS may:

- Issue a notice of noncompliance;
- Impose an administrative fine of no more than \$5,000;
- Issue cease and desist orders;
- Revoke, suspend or refuse registration;
- Impose a DACS' specified probationary period;
- Seek a civil remedy of up to \$5,000 per violation; or
- Seek restitution on behalf of an aggrieved party.

DACS must notify DHSMV when a registration issued under the provisions of the bill has been suspended or revoked by order of DACS. That notification must be sent within 10 days after issuance of the order.

Under the bill, operation of an unregistered wrecker company and performance of wrecker services without being employed by a registered wrecker company are third-degree felonies.

All fees, penalties, and other monies collected pursuant to this new law are deposited into DACS' General Inspection Trust Fund and may only be used to implement the new law.

### **Wrecker Allocation System**

#### **Present Situation**

The Florida Highway Patrol (FHP) is authorized in s. 321.051, F.S., to operate a wrecker operator system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from crash scenes, and for the removal and storage of abandoned vehicles. All wrecker operators are eligible for use in the system provided their equipment meets recognized safety qualifications and mechanical standards set by the FHP for the size of vehicle the equipment is designed to handle.

FHP can set maximum rates for towing and storage of vehicles removed at its request, if the rates have not already been set by a county or municipality. A wrecker operator may pursue an appeal by writ of certiorari from the circuit court if its participation in the system is denied, suspended, or revoked.

Wrecker operators are prohibited from monitoring police radios for communications between patrol field units and the dispatcher to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene to initiate contact with the owner of the wrecked or disabled vehicle. This illegal monitoring is punishable by a civil fine of up to \$500. If the operator initiates contact before arrival of the dispatched operator, solicits towing, and tows the vehicle, or if the disabled vehicle owner or operator initiates contact, but the wrecker operator fails to disclose that he or she was not dispatched and fails to disclose all rates in writing for towing and storage, the drive-by wrecker operator commits a second-degree misdemeanor. A wrecker operator who falsely identifies him or herself as part of the system commits a first-degree misdemeanor. The law does not prohibit any person from calling a wrecker operator directly for services, even if that operator is not authorized to participate in the system.

Local governments are also authorized to operate a similar wrecker operator dispatch system, pursuant to s. 323.002, F.S.

In addition, current law provides regulations governing the operation of storage facilities containing towed vehicles held at the request of investigating law enforcement agencies, and provides for liens against towed and stored vehicles when the owners fail to pay towing and storage costs.

#### **Effect of Proposed Changes**

The existing ss. 321.051 and 323.002, F.S., are rewritten in HB 93, but the primary changes are made to reflect the wrecker registration and certification requirements imposed in the new chapter 508, F.S.

The bill defines and differentiates between wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks. It also renames the "wrecker operator system" as the "wrecker allocation system."

The key change is that only registered wrecker companies and certified operators are able to participate in the wrecker allocation system. The law still allows the owner or operator of a disabled vehicle to hire an unauthorized wrecker; however, the law enforcement officer on the scene may, in the interest of public safety, dispatch an authorized wrecker operator if the officer believes it will arrive before the wrecker company requested by the motorist.



## **Liens assessed on towed and stored vehicles**

### **Present Situation**

Section 713.78, F.S., currently provides that when a wrecker or tow service properly tows a vehicle they have a lien against the vehicle for payment of reasonable towing and storage fees. The owner of the vehicle may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle the service must send notice to the registered owner and all lien holders by certified mail within 7 business days after the date of storage of the vehicle. The section further provides that a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care.

The law also limits the liability of a wrecker operator when towing or storing a vehicle. The section provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker uses reasonable care. The wrecker operator is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic. The section provides a wrecker has used reasonable care if:

- the wrecker operator surrounds the storage facility with a chain-link or solid fence at least 6 feet in height;
- the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; and
- the wrecker operator employs a night watchman, security dog, or security cameras.

In addition, current law requires any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway to conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property not identified on the inventory record prepared by the law enforcement agency.

Section 713.78 (13), F.S., provides that upon receipt by DHSMV of written notice from a wrecker operator claiming a lien for recovery, towing, or storage of an abandoned vehicle, vessel, or mobile home upon instructions from any law enforcement agency, for which a certificate of destruction has been issued, DHSMV must place the name of the registered owner of that vehicle, vessel, or mobile home on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle. If the vehicle, vessel, or mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list.

The section further provides the amount of the wrecker operator's lien for which the DHSMV will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality.

The registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien by notifying DHSMV of the dispute in writing, if at least one of the following applies:

- The registered owner presents a notarized bill of sale proving the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
- The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

### **Effect of Proposed Changes**

HB 93 amends s. 713.78, F.S., to provide that a registered owner may dispute a wrecker operator's lien if DHSMV's records were marked sold prior to the issuance of a certificate of destruction.

The section is further amended to provide that the lien dispute resolution process in current law does not apply to a leased vehicle registered in the name of the lessor. Additionally, the revisions provide that reasonable attorney fees may be awarded to the prevailing party in complaints concerning the wrongful taking of property. Further, the bill provides that employees or authorized agents of a wrecker company are not liable for civil damages when removing a vehicle or vehicle cargo that is an imminent public safety hazard from a public road if requested by a law enforcement officer, deputy sheriff, or firefighter.

### **Other issues in HB 93**

- Wrecker companies must accept at least two of the following three forms of payment: cash, cashier's check, money order, traveler's check; a valid personal check showing the name and address of the vehicle or vessel owner or operator; or a valid credit card.
- The bill requires that a wrecker license plate must be placed on the front of a wrecker.
- A wrecker may not be registered and licensed as such with DHSMV unless the owner of the vehicle is a wrecker company registered with DACS pursuant to the new chapter 508, F.S. This provision does not apply to wreckers that are registered under the International Registration Plan.
- Local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than this new law, and may still levy business taxes. DACS may enter into a cooperative agreement with any county or municipality that provides for the referral, investigation, and prosecution of consumer complaints alleging violations of the provisions of this bill. DACS may also delegate enforcement to any county or municipality entering into a cooperative agreement.
- The bill provides immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, law enforcement officers and other emergency response personnel from property damages or claims of damage for removal of vehicles or vehicle cargo from blocking the roadway when there is an imminent public safety hazard.

The bill harmonizes the various definitions of "wrecker" and "wrecker operator" throughout Florida Statutes.

### **Infractions and Criminal Offenses Created By This Bill**

This bill creates the following offenses:

#### **Infraction<sup>1</sup>**

Listening to a police radio with the intent to dispatch a wrecker outside of a wrecker allocation system (a rotation list). See new ss. 321.051(3)(a) and 323.002(2)(b), F.S.

#### **Second Degree Misdemeanor<sup>2</sup>**

If not dispatched pursuant to the rotation list, driving by a wrecked or disabled vehicle and initiating contact with the owner with the intent to solicit towing business. See new ss. 321.051(3)(b) and 323.002(2)(d), F.S.

<sup>1</sup> An infraction is punishable by a fine of no more than \$500. See s. 775.083, F.S.

<sup>2</sup> A second degree misdemeanor is punishable by confinement in the county jail for up to 60 days and/or a fine of up to \$500. See ss. 775.082 and 775.083, F.S.

If not dispatched pursuant to the rotation list, failing to disclose to the owner of the vehicle that the operator was not dispatched according to the list, or failing to disclose the price in writing prior to providing the towing service. See new ss. 321.051(3)(c) and 323.002(2)(d), F.S.

First Degree Misdemeanor<sup>3</sup>

If not dispatched pursuant to the rotation list, falsely claiming to have been dispatched pursuant to the list. See new ss. 321.051(3)(d) and 323.002(2)(e), F.S.

Third Degree Felony (unranked in Criminal Punishment Code)<sup>4</sup>

Operating a wrecker company without having registered with DACS. See new s. 508.15(1), F.S.

Performing wrecker services without being an employee or owner of a registered wrecker company. See new s. 508.115(2), F.S.

Towing a vehicle or vessel to a storage facility more than 10 miles from point of towing (15 miles in a county of less than 500,000, and increased to 20 and 30 miles respectively if no wrecker company is located within the smaller radius). See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to be continuously open between 8:00 a.m. and 6:00 p.m. on a regular business day. See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request. See new s. 715.07(6)(b), F.S.

Failure to release a vehicle or vessel about to be towed when the owner shows up, offers to pay half the standard towing fee, and agrees to immediately move the vehicle or vessel. See new s. 715.07(6)(b), F.S.

A wrecker company or operator offering a property owner a rebate or other consideration for the privilege of towing from the property; or a property owner soliciting a rebate or other consideration from a wrecker operator or operator for the privilege of towing from the property. See new s. 715.07(6)(b), F.S.

Refusal of a wrecker operator to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return. A wrecker operator conditioning return of a vehicle or vessel on the owner of a vehicle or vessel signing a liability waiver. Failure of a wrecker operator to give the owner of a vehicle or vessel a signed receipt showing the name of the company. See new s. 715.07(6)(b), F.S.

**Florida's Sunrise Act**

Section 11.62, F.S., provides guiding principles for the establishment of new regulatory programs for professions and occupations. Subsection (3) provides that in determining whether to regulate a profession or occupation, the Legislature shall consider certain factors, including: whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare; whether the practice of the profession or occupation requires specialized skill or training; whether the regulation will have an unreasonable effect on job creation or job retention in the state; and whether the overall cost effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

<sup>3</sup> A first degree misdemeanor is punishable by confinement in the county jail for up to 1 year and/or a fine of up to \$1000. See ss. 775.082 and 775.083, F.S.

<sup>4</sup> A third degree felony is punishable by confinement in state prison for up to 5 years and/or a fine of up to \$5,000. An unranked third degree felony is a Level 1 offense in the Criminal Punishment Code. The Criminal Punishment Code sets minimum sentences for felony offenses based on a point system. Unless the offender has a prior criminal record, committing one Level 1 offense of the type created by this bill will yield a minimum of "any nonstate prison sanction", meaning that there is no minimum term of incarceration. See ss. 775.082 and 775.083, F.S.

Subsection (4) of s. 11.62, F.S., provides that the proponents of legislation that provides for the regulation of a profession or occupation not already subject to state regulation shall provide, *upon request*, certain information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred. Similarly, subsection (5) provides that the agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation, including the resources necessary to implement and enforce the proposed regulation.

#### C. SECTION DIRECTORY:

Section 1: Creates ch. 508, F.S., related to Wrecker Services. Creates ss. 508.101, 508.102, 508.103, 508.105, 508.106, 508.1061, 508.107, 508.108, 508.109, 508.111, 508.112, 508.113, 508.114, 508.116, 508.117, 508.118, 508.119, and 508.120, F.S.; provides for definitions; creates a wrecker operator advisory council assigned to the state Department of Agriculture and Consumer Services (DACS); provides DACS with rule-making authority; specifies registration requirements, renewal of registrations, denial of registrations, forms of payment wrecker companies must accept, operator certifications, certification cards, process, and continuing education; provides for DACS's inspection of employment records; specifies prohibited acts, administrative penalties, criminal penalties, fees, disposition of payments, recovery agent exemptions, preservation of ordinances, and records maintenance requirements of wrecker companies.

Section 2: Creates s. 508.104, F.S., requiring registration for wrecker companies.

Section 3: Creates s. 508.110, F.S., requiring wrecker operator certification.

Section 4: Creates s. 508.115, F.S., establishing criminal penalties.

Section 5: Effective January 1, 2008, amends s. 120.80, F.S., to reflect changes in definitions created elsewhere in the bill.

Section 6: Creates s. 205.1977, F.S., prohibiting counties and municipalities from issuing local business tax receipts to unregistered wrecker companies.

Section 7: Amends s. 316.530, F.S., to delete the term "tow truck."

Section 8: Amends s. 320.01, F.S., to amend the definition of "wrecker."

Section 9: Effective January 1, 2008, amends s. 320.03, F.S., to replace "wrecker operator" with "wrecker company."

Section 10: Amends s. 320.0706, F.S., requiring license plates to be displayed on the front end of wreckers.

Section 11: Amends s. 320.0821, F.S., providing that a wrecker, regardless of its weight, shall display only one license plate and that it must be displayed on the front of the wrecker.

Section 12: Effective January 1, 2008, amends s. 320.0821, F.S., prohibiting DHSMV from renewing a license plate for a wrecker unless the company owning the wrecker is registered with the state, pursuant to chapter 508, F.S.

Section 13: Amends s. 320.13, F.S., to delete the term "tow truck" and add a cross-reference.

Section 14: Reenacts s. 316.550, F.S., to incorporate the amendments made to s. 320.01, F.S.

Section 15: Reenacts s. 320.08, F.S., to incorporate amendments made to s. 320.01, F.S.

Section 16: Effective January 1, 2008, amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and add definitions. Requires that only wrecker companies registered under chapter 508, F.S., may be part of the allocation system; specifies under what circumstances law enforcement officers may dispatch wrecker companies out of rotation or override the selection of a wrecker company by the owner/operator of the disabled vehicle needing a tow.

Section 17: Effective January 1, 2008, amends s. 323.001, F.S., to reflect terminology and registration changes implemented elsewhere in the bill.

Section 18: Effective January 1, 2008, amends s. 323.002, F.S., to rename the county and municipal wrecker operator system as "the county and municipal wrecker allocation system" and to reflect terminology and registration changes implemented elsewhere in the bill; specifies that only wrecker companies registered pursuant to chapter 508, F.S., may be included in the allocation system.

Section 19: Effective January 1, 2008, amends s. 713.78, F.S., to reflect the changes in terminology and definitions created pursuant to the new chapter 508, F.S.; requires an award of damages, costs, and reasonable attorney's fees for the prevailing party in a lien case; authorizes law enforcement officers, firefighters, emergency medical services providers, and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability, and without the consent of the owner or operator, if the vehicle or cargo poses an imminent public safety hazard; provides for dispute of a wrecker operator's lien if DHSMV records indicate that the vehicle or vessel was sold before issuance of a certificate of destruction.

Section 20: Provides that amendments to s. 713.78, F.S., made by this act do not affect the validity of liens established under s. 713.78, F.S., before January 1, 2008.

Section 21: Effective January 1, 2008, amends s. 715.07, F.S., related to towing vehicles from real property. Clarifies that this section will address towing vehicles and vessels parked on real property without permission; updates to include new wrecker-related terminology and registration requirements; prohibits property owners from soliciting rebates from a wrecker company or operator from using his or her services; corrects cross-references.

Section 22: Effective January 1, 2008, repeals subsection (15) of s. 1.01, F.S., the definition of "wrecker operator."

Section 23: Provides for an appropriation of \$693,000 from the General Inspection Trust Fund to DACS and 9 additional FTE positions for the agency to implement the provisions of this act.

Section 24: Provides that the act shall take effect July 1, 2007, except where otherwise specified.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

##### **DACS**

	FY 07-08	FY 08-09	FY 09-10
Recurring GITF	693,000	693,000	693,000

Registration fee revenues are to be deposited in the General Inspection Trust Fund.

**Florida Department of Law Enforcement (FDLE)**

	FY 07-08	FY 08-09	FY 09-10
<u>Recurring</u>			
New applicant background checks estimated at 280 (20% turnover – 280 x \$23)		6,440	6,440
<u>Nonrecurring</u>			
Anticipated first year (1,400 background checks @ \$23)	32,200		

Revenues are to be deposited in the Operating Trust Fund.

## 2. Expenditures:

**DACS**

	FY 07-08	FY 08-09	FY 09-10
<u>Recurring GITF</u>			
Positions (10)	478,677	488,251	498,016
Expenses	67,462	68,962	68,962
AGMIC		6,200	6,200
Non-operating costs (including Gen. Rev. Svc. Chg.)	<u>100,451</u>	<u>100,451</u>	<u>100,451</u>
<b>Total</b>			
<b>Recurring</b>	646,590	663,864	673,629
<u>Nonrecurring GITF</u>			
Op. Capital Outlay	13,000		
Expenses	32,974		
<b>Total Non- Recurring Costs - GITF</b>	<u>45,974</u>		
<b>Grand Total of Costs (GITF)</b>	<u>692,564</u>	<u>663,864</u>	<u>673,629</u>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

## 1. Revenues:

Indeterminate. It is unknown at this time how much revenue local governments derive from occupational license fees from wrecker companies. If some wrecker companies decide not to register with the state, or delay registration for a year or two, then they would not be able to obtain an occupational license from their city or county of operation.

## 2. Expenditures:

Indeterminate. Some local governments may enter into cooperative agreements with DACS to help enforce the wrecker regulations, but the cost of such responsibilities is unknown at this time.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee of \$495 and comply with the new certification requirements. It is unknown at this time how much the certification and continuing education requirements will cost industry members. According to one industry representative, voluntary wrecker education courses currently cost from \$75 to \$130. The wrecker industry also will incur the costs of fingerprinting and background checks to meet the new registration requirements. According to FDLE, each request is \$47, \$23 of which goes into the FDLE Operating Trust Fund. The remaining \$24 from each request is forwarded to the Federal Bureau of Investigation.

The general public also is likely to be financially impacted because some wrecker companies may increase towing fees and other charges to cover the new costs of regulation. In any event, the financial cost to consumers is indeterminate at this time, as are the benefits of increased safety and the improved sense of trust and security consumers may experience from having access to better educated and better regulated wrecker operators.

HB 93 also may promote an increase in the number of companies offering wrecker education courses with competitive tuition prices, since certification and continuing education will be a requirement for all tow truck operators working for registered wrecker companies.

### D. FISCAL COMMENTS:

HB 93 authorizes nine new positions in DACS, and appropriates \$693,000 from the General Inspection Trust Fund. It should be noted that DACS states ten positions are necessary to implement the wrecker regulation program at this same cost. Their analysis, however, illustrates that the \$495 registration fee will cover all FY 2007-08 expenditures by DACS, and these revenues should exceed projected expenditures in future years. If fewer than the estimated 1,400 Florida wrecker companies decide to register with DACS, expenditures would exceed revenues and this program would be operating on a deficit.

Additionally, HB 93 creates a number of misdemeanor and felony offenses. Felony offenses could require prison time so it is recommended that the Criminal Justice Estimating Conference review the bill for any potential prison bed impacts. However, if the Legislature fails to rank a felony offense on the offense severity ranking chart (which is the case here), the offense typically defaults to a level 1 which is normally presumed to carry a minimal impact on the prisons.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to HB 93 because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

#### 2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

In proposed s. 108.103, F.S., DACS is granted rulemaking authority to administer the chapter, including prescribing specific standards to further define each of the described specialized wrecker services; governing the issuance of certification cards to wrecker operators who meet specified requirements; and setting and adopting a fee schedule.

Included in the rewrite of s. 321.051, F.S., the DHSMV is directed to adopt rules prescribing procedures for setting rates for towing and storage of vehicles removed at the request of the FHP.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**2005 Legislation:**

A nearly identical bill (CS/SB 276) passed the 2005 Legislature. The legislation; however, was vetoed by Governor Bush. The veto message stated, in part:

" . . . The bill places excessive regulatory and cost burdens on the entire wrecker industry, a burden that will be particularly difficult for smaller wrecker companies to bear. . . . The Department of Agriculture and Consumer Services will be required to provide regulation and enforcement of over 1,500 wrecker companies across the state. Although the bill authorizes 10 FTE positions and appropriates \$683,000. . . it is not certain that those resources will sufficiently equip the department to carry out its new responsibilities.

. . . the Sunrise Act(,) establishes criteria that must be met before initiating regulation of an industry group in Florida. Among them is the requirement to show that, left unregulated, current industry activities will endanger or substantially harm the public safety or welfare. While proponents of the bill have shown through newspaper articles and videos that problems do exist as the result of abuses by unscrupulous "gypsy" towers, there is insufficient evidence to meet the threshold of *substantial harm* as required by the Sunrise Act."<sup>5</sup>

**FDLE Analysis:**

In its analysis of the bill, FDLE recommends adding the following language regarding criminal history record checks: *The Department of Agriculture and Consumer Services shall collect from each applicant the fingerprint processing fee of \$23 for state processing and an additional fee for national processing. The department shall screen background results to determine if applicant meets the requirements for issuance of a registration certificate.*

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

N/A

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<sup>5</sup> Veto letter for CS/SB 276, June 3, 2005, Governor Jeb Bush.



## Amendment No.

COUNCIL/COMMITTEE ACTION

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

23 ultimate equitable owner of a wrecker company registered under  
24 this chapter who has been an ultimate equitable owner of that  
25 company registered for at least 5 years before his or her  
26 appointment; one member must be a wrecker operator certified  
27 under this chapter who is not an ultimate equitable owner of a  
28 wrecker company and who has been a certified wrecker operator  
29 for at least 5 years before his or her appointment; and two  
30 members must be laypersons. Each member must be a resident of  
31 this state.

32 (3) The term of each member of the council is 4 years,  
33 except, to establish staggered terms, two members who are owners  
34 of wrecker companies and one layperson shall be appointed  
35 initially for a 2-year term. Members may be reappointed for  
36 additional terms not to exceed 8 years of consecutive service. A  
37 vacancy shall be filled for the remainder of the unexpired term  
38 in the same manner as the original appointment.

39 (4) (a) From among its members, the council shall annually  
40 elect a chair, who shall preside over the meetings of the  
41 council, and a vice chair.

42 (b) In conducting its meetings, the council shall use  
43 accepted rules of procedure. The department shall keep a  
44 complete record of each meeting showing the names of members  
45 present and the actions taken. These records and other documents  
46 regarding matters within the jurisdiction of the council must be  
47 kept on file with the department.

48 (5) The members of the council shall serve without  
49 compensation but are entitled to reimbursement of travel and per  
50 diem expenses under s. 112.061.

51 (6) The department shall provide administrative and staff  
52 support services relating to the functions of the council.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

53       (7) The council shall review the rules adopted by the  
54 department to administer this chapter and shall advise the  
55 department on matters relating to industry standards and  
56 practices and other issues that require technical expertise and  
57 consultation or that promote better consumer protection in the  
58 wrecker industry.

59       508.103 Rulemaking authority.--The department may adopt  
60 rules under ss. 120.536(1) and 120.54 to administer this  
61 chapter.

62       508.105 Registration requirements; renewal of  
63 registrations.--

64       (1) Each wrecker company engaged or attempting to engage  
65 for hire in the business of towing, carrying, or transporting  
66 vehicles or vessels by wrecker upon the streets and highways of  
67 this state must annually register with the department on forms  
68 prescribed by the department. The application for registration  
69 must include at least the following information:

70       (a) The name and federal employer identification number of  
71 the wrecker company.

72       (b) The mailing address, physical address, and telephone  
73 number of the wrecker company's primary place of business.

74       (c) The fictitious name under which the wrecker company  
75 transacts business in this state.

76       (d) The full name, residence address, business address,  
77 and telephone number of the applicant. If the applicant is other  
78 than a natural person, the application must also contain the  
79 full name, residence address, business address, telephone  
80 number, and federal employer identification number, if  
81 applicable, of each ultimate equitable owner of the business  
82 entity and each officer, director, partner, manager, member, or  
83 managing member of the entity.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

84       (e) If the applicant is other than a natural person, the  
85       full name of the business entity's registered agent and the  
86       address of the registered office for service of process.

87       (f) The physical address and telephone number of each  
88       business location and each storage facility where the wrecker  
89       company stores towed vehicles or vessels.

90       (2) Each initial and renewal application for registration  
91       must be accompanied by the registration fee prescribed in s.  
92       508.116.

93       (3) Each initial application for registration must be  
94       accompanied by a complete set of the applicant's fingerprints  
95       taken by a law enforcement agency. If the applicant is other  
96       than a natural person, a complete set of fingerprints must be  
97       filed for each ultimate equitable owner of the business entity  
98       and each officer, director, partner, manager, member, or  
99       managing member of the entity. The department shall submit the  
100       fingerprints to the Department of Law Enforcement for state  
101       processing, and the Department of Law Enforcement shall forward  
102       the fingerprints to the Federal Bureau of Investigation for  
103       national processing. The applicant must also pay the Department  
104       of Law Enforcement a fingerprint processing fee of \$23 for state  
105       processing, and the amount of the fee charged by the Federal  
106       Bureau of Investigation for federal processing, for each  
107       applicant's name submitted. Registration renewal applications  
108       need not be accompanied by a set of fingerprints for an  
109       individual who previously submitted a set of fingerprints to the  
110       department as part of a prior year's registration application.

111       (4) The department shall review each application in  
112       accordance with s. 120.60 and shall issue a registration  
113       certificate, in the form and size prescribed by the department,  
114       to each wrecker company whose application is approved. The

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

115 certificate must show at least the name and address of the  
116 wrecker company and the registration number. The registration  
117 certificate must be prominently displayed in the wrecker  
118 company's primary place of business.

119 (5) Each advertisement of a wrecker company must include  
120 the phrase "Fla. Wrecker Co. Reg. No. ." For the purpose of  
121 this subsection, the term "advertisement" means a printed or  
122 graphic statement made in a newspaper or other publication or  
123 contained in any notice, handbill, or sign, including signage on  
124 a vehicle, flyer, catalog, or letter.

125 (6) A registration is invalid for a wrecker company  
126 transacting business at a place other than the location  
127 specified in the registration application unless the department  
128 is first notified in writing before the change of location. A  
129 registration issued under this chapter is not transferable or  
130 assignable, and a wrecker company may not conduct business under  
131 a name other than the name registered. A wrecker company  
132 desiring to change its registered name, location, or registered  
133 agent for service of process at a time other than upon renewal  
134 of registration must notify the department of the change.

135 (7)(a) Each registration must be renewed annually on or  
136 before the expiration date of the current registration. A late  
137 fee of \$25 must be paid, in addition to the registration fee or  
138 any other penalty, for a registration renewal application that  
139 is received by the department after the expiration date of the  
140 current registration. The department may not issue a  
141 registration until all fees are paid.

142 (b) A wrecker company whose primary place of business is  
143 located within a county or municipality that requires, by local  
144 ordinance, a local business tax receipt under chapter 205 may  
145 not renew a registration under this chapter unless the wrecker

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

146 company obtains the business tax receipt from the county or  
147 municipality.

148 (8) Each wrecker company must provide the department with  
149 a certificate of insurance for the insurance coverage required  
150 under s. 627.7415 before the department may issue the  
151 certificate for an initial or renewal registration. The  
152 department must be named as a certificateholder on the insurance  
153 certificate and must be notified at least 30 days before any  
154 change in insurance coverage.

155 (9) The department shall notify the Department of Highway  
156 Safety and Motor Vehicles when a registration issued under this  
157 chapter has been suspended or revoked by order of the  
158 department. Notification must be sent within 10 days after the  
159 department issues the suspension or revocation order.

160 508.106 Denial of registration.--The department may deny,  
161 revoke, or refuse to renew the registration of a wrecker company  
162 based upon a determination that the applicant or, if the  
163 applicant is other than a natural person, the wrecker company or  
164 any of its ultimate equitable owners, officers, directors,  
165 partners, managers, members, or managing members has:

166 (1) Not met the requirements for registration under this  
167 chapter;

168 (2) Been convicted or found guilty of, regardless of  
169 adjudication, or pled guilty or nolo contendere to, a felony  
170 within the last 10 years;

171 (3) Been convicted or found guilty of, regardless of  
172 adjudication, or pled guilty or nolo contendere to, a crime  
173 within the last 10 years involving repossession of a motor  
174 vehicle under chapter 493, repair of a motor vehicle under ss.  
175 559.901-559.9221, theft of a motor vehicle under s. 812.014,  
176 carjacking under s. 812.133, operation of a chop shop under s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

177 812.16, failure to maintain records of motor vehicle parts and  
178 accessories under s. 860.14, violations relating to airbags  
179 under s. 860.145 or use of fake airbags under s. 860.146,  
180 overcharging for repairs and parts under s. 860.15, or a  
181 violation of towing or storage requirements for a motor vehicle  
182 under this chapter, s. 321.051, chapter 323, s. 713.78, or s.  
183 715.07;

184 (4) Not satisfied a civil fine or penalty arising out of  
185 an administrative or enforcement action brought by the  
186 department, another governmental agency, or a private person  
187 based upon conduct involving a violation of this chapter;

188 (5) Pending against him or her a criminal, administrative,  
189 or enforcement proceeding in any jurisdiction based upon conduct  
190 involving a violation of this chapter; or

191 (6) Had a judgment entered against him or her in an action  
192 brought by the department under this chapter.

193 508.1061 Acceptable forms of payment.--A wrecker company  
194 shall accept a minimum of two of the three following forms of  
195 payment:

196 (1) Cash, cashier's check, money order, or traveler's  
197 check.

198 (2) Valid personal check, showing upon its face the name  
199 and address of the vehicle or vessel owner or authorized  
200 representative.

201 (3) Valid credit card, including, but not limited to, Visa  
202 or MasterCard.

203 508.107 Wrecker operator certification program.--

204 (1) The department, in consultation with the council,  
205 shall establish a wrecker operator certification program by  
206 December 31, 2007. Under this program, the council shall approve  
207 certification courses for wrecker operators conducted by

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

208 approved organizations. The council shall prescribe the minimum  
209 curricula for these courses, including instruction for operators  
210 of light duty, medium duty, and rollback trucks, which must be  
211 at least a 16 hour course for light duty, medium duty, and  
212 rollback wreckers. Included in the course must be instruction  
213 in: towing and winching a passenger vehicle and uprighting an  
214 overturned passenger vehicle, including the proper use of  
215 chains, wire rope, and straps; towing and winching a medium-  
216 sized commercial vehicle and uprighting an overturned medium-  
217 sized commercial vehicle; and proper loading, securing,  
218 transporting, and unloading of a vehicle on a flatbed-rollback  
219 wrecker. Such instruction must be equally apportioned between  
220 theoretical instruction and practical training. This class shall  
221 be 16 hours and should be taken within the first six months of  
222 employment. The council must approve each organization and its  
223 certification course before the course is accepted for  
224 certification of wrecker operators under this chapter.

225 (2) Each approved wrecker operator certification course  
226 must include a certification examination demonstrating a wrecker  
227 operator's knowledge, skills, and abilities in performing  
228 wrecker services and proficiency in the subject matter of the  
229 certification course. The council must approve each  
230 certification examination before the examination is accepted for  
231 certification of wrecker operators under this chapter.

232 (3) Each organization conducting an approved wrecker  
233 operator certification course must issue on forms prescribed by  
234 the department a certificate to each wrecker operator who  
235 completes the approved certification course and passes the  
236 approved certification examination.

237 508.108 Specialized wrecker services.--



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

238       (1) In addition to the minimum curricula for certification  
239 of wrecker operators, approved certification courses may offer  
240 optional instruction, training, and examination of wrecker  
241 operators for each of the following specialized wrecker  
242 services:

243       (a) Heavy and ultra-heavy duty.--Towing and winching a  
244 standard large-sized commercial vehicle and uprighting an  
245 overturned standard large-sized commercial vehicle; towing and  
246 winching a specialty large-sized commercial vehicle or another  
247 complex vehicle and uprighting an overturned specialty large-  
248 sized commercial vehicle or another complex vehicle. This class  
249 shall be 16 hours and should be taken within the first year of  
250 employment.

251       (b) Hazardous materials.--Awareness of hazardous materials.  
252 Instruction and training for this wrecker service must comprise  
253 at least 8 hours in order to be approved.

254       (c) Air cushions.--Proper use of air cushions in the  
255 recovery of a heavy-duty vehicle.

256       (2) The department shall adopt rules prescribing specific  
257 standards to further define each of the specialized wrecker  
258 services described in subsection (1). The council must approve  
259 the instruction, training, and examination for a specialized  
260 wrecker service before the specialized wrecker service is  
261 accepted for endorsement of a wrecker operator's certification  
262 under this chapter.

263       (3) Each organization conducting an approved wrecker  
264 operator certification course must issue on forms prescribed by  
265 the department a certificate to each wrecker operator who  
266 completes the approved instruction and training for a  
267 specialized wrecker service and passes the approved endorsement  
268 examination for that specialized wrecker service.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

508.109 Certification cards.--

(1) Each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the approved certification course and passes the approved certification examination. The department must approve the form of the certification cards issued by each organization. Each certification card must include the wrecker operator's name, a color photograph or digital image of the wrecker operator, and the expiration date of the certification card.

(2) Each certification card must also include the wrecker operator's applicable endorsements for those specialized wrecker services for which the wrecker operator completed the approved instruction and training and passed the approved endorsement examination.

(3) (a) The department may adopt rules governing the issuance of a certification card to a wrecker operator who:

1. Completes a certification course and passes a certification examination in another state, which course and examination are substantially equivalent to the approved certification courses and approved certification examinations in this state.

2. Completed a certification course and passed a certification examination in this state between January 1, 2003, and December 31, 2007, which course and examination are substantially equivalent to the approved certification courses and the approved certification examinations. This subparagraph expires July 1, 2008.

3. Completed instruction and training for a specialized wrecker service and passed an endorsement examination for that specialized wrecker service between January 1, 2003, and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

December 31, 2007, which instruction, training, and examination are substantially equivalent to the approved instruction and training and the approved endorsement examinations. This subparagraph expires July 1, 2008.

(b) For the purposes of this subsection, the council shall approve each certification examination in another state, and shall approve the instruction, training, and examination for each specialized wrecker service in another state, that the council determines are substantially equivalent to the approved certification courses and approved certification examinations in this state or to the approved instruction, training, and endorsement examinations for a specialized wrecker service in this state.

(4) Each certification card expires 5 years after the date of issuance.

(5) Certification cards shall be issued by the organizations conducting approved wrecker operator certification courses. The department is not responsible for issuing certification cards or for the costs associated with the issuance of certification cards.

508.111 Renewal of certification; continuing education requirements.--

(1) The department, in consultation with the council, shall establish a continuing education program for the recertification of wrecker operators by December 31, 2008. In order to renew a wrecker operator's certification card, an operator must complete 4 hours of continuing education every 5 years. The council must prescribe the minimum curricula and proper examination for each continuing education course, each of which must be at least 4 hours in length. The council shall approve each organization, and the continuing education course

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

331 it proposes to offer, before the course is approved for  
332 recertifying wrecker operators. Coursework may be completed in a  
333 classroom setting or, if available, online.

334 (2) Each organization conducting an approved wrecker  
335 operator continuing education course must issue, on forms  
336 prescribed by the department, a certificate to each wrecker  
337 operator who completes the approved course and passes an  
338 approved recertification examination.

339 508.112 Prohibited acts.--It is a violation of this  
340 chapter for a person to:

341 (1) Charge rates that exceed the maximum rates imposed by  
342 the ordinances of the respective county or municipality under  
343 ss. 125.0103(1)(c) and 166.043(1)(c).

344 (2) Violate s. 321.051, relating to the Florida Highway  
345 Patrol wrecker allocation system.

346 (3) Violate s. 323.002, relating to county and municipal  
347 wrecker allocation systems.

348 (4) Violate s. 713.78, relating to liens for recovering,  
349 towing, or storing vehicles and vessels.

350 (5) Violate s. 715.07, relating to towing or removing  
351 vehicles and vessels parked on real property without permission.

352 (6) Refuse to allow a law enforcement officer to inspect a  
353 towing and storage facility as required in s. 812.055.

354 (7) Allow a person who is not certified as a wrecker  
355 operator under this chapter to perform wrecker services or  
356 specialized wrecker services for the wrecker company for more  
357 than 6 months after first being employed by, or becoming an  
358 ultimate equitable owner of, the wrecker company.

359 (8) Allow a wrecker operator certified under this chapter  
360 to perform a specialized wrecker service for the wrecker company

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

361 if the wrecker operator's certification does not include an  
362 endorsement for that specialized wrecker service.

363 (9) Perform an act otherwise prohibited by this chapter or  
364 fail to perform an act otherwise required by this chapter.

365 508.113 Administrative penalties; inspection of records.--

366 (1) The department may take one or more of the following  
367 actions if the department finds that a person has violated this  
368 chapter or the rules or orders issued under this chapter:

369 (a) Issue a notice of noncompliance under s. 120.695.

370 (b) Impose an administrative fine not to exceed \$5,000 for  
371 each act or omission.

372 (c) Direct the person to cease and desist specified  
373 activities.

374 (d) Refuse to register the wrecker company or suspend or  
375 revoke the wrecker company's registration.

376 (e) Place the wrecker company on probation for a period of  
377 time, subject to the conditions specified by the department.

378 (2) Chapter 120 shall govern an administrative proceeding  
379 resulting from an order imposing a penalty specified in  
380 subsection (1).

381 508.114 Civil penalties.--The department may bring a civil  
382 action in a court of competent jurisdiction to recover any  
383 penalties or damages allowed in this chapter and for injunctive  
384 relief to enforce compliance with this chapter. The department  
385 may seek a civil penalty of up to \$5,000 for each violation of  
386 this chapter and may seek restitution for and on behalf of any  
387 owner of a vehicle or vessel who is aggrieved or injured by a  
388 violation of this chapter.

389 508.116 Fees.--The department shall adopt by rule a fee  
390 schedule not to exceed the following amounts:

391 (1) Wrecker company registration fee: \$495.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

392       (2) Wrecker company registration renewal fee: \$495.

393       The department shall collect and maintain data relating to the  
394       registration fees and shall review the fee amounts after the  
395       first 2 years of the registration program's existence.

396       508.117 General Inspection Trust Fund; payments.--All  
397       fees, penalties, or other funds collected by the department  
398       under this chapter must be deposited in the General Inspection  
399       Trust Fund and may only be used for the purpose of administering  
400       this chapter.

401       508.118 County and municipal ordinances.--A county or  
402       municipality may enact ordinances governing the business of  
403       transporting vehicles or vessels by wrecker that are more  
404       restrictive than this chapter. This section does not limit the  
405       authority of a political subdivision to impose regulatory fees  
406       or charges or to levy local business taxes under chapter 205.  
407       The department may enter into a cooperative agreement with any  
408       county or municipality that provides for the referral,  
409       investigation, and prosecution of consumer complaints alleging  
410       violations of this chapter. The department is authorized to  
411       delegate enforcement of this chapter to any county or  
412       municipality entering into a cooperative agreement.

413       508.119 Records.--

414       (1) Each wrecker company shall maintain records of its  
415       wrecker services for at least 12 months. These records shall be  
416       maintained at the wrecker company's principal place of business.

417       (2) Each wrecker company shall maintain records on each of  
418       its wrecker operators sufficient to demonstrate that the  
419       operator has successfully completed an approved wrecker operator  
420       certification course or an approved wrecker operator continuing  
421       education course and is certified to perform wrecker services.  
422       These records shall be maintained at the wrecker company's

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

principal place of business for as long as the operator is  
employed by the wrecker company and for at least 6 months  
thereafter.

(3) Each organization approved to conduct a wrecker  
operator certification course or approved to offer a wrecker  
operator continuing education course shall maintain records on  
each person who successfully completes one of the courses. The  
records shall be maintained at the organization's principal  
place of business for at least 5 years. The department may, at  
any time during normal business hours, enter the organization's  
principal place of business to examine the records.

Section 2. Effective January 1, 2008, section 508.104,  
Florida Statutes, is created to read:

508.104 Wrecker companies; registration required.--

(1) A person may not own, operate, solicit business for,  
advertise services for, or otherwise engage for hire in the  
business of a wrecker company in this state unless that person  
is registered with the department under this chapter.

(2) A person applying for or renewing a local business tax  
receipt to engage for hire in the business of a wrecker company  
must exhibit a current registration certificate from the  
department before the local business tax receipt may be issued  
or reissued under chapter 205.

(3) This section does not apply to any franchised motor  
vehicle dealer licensed pursuant to s. 320.27 when wrecker  
services are incidental to the operation of the franchise.

Section 3. Effective January 1, 2008, section 508.110,  
Florida Statutes, is created to read:

508.110 Wrecker operators; certification required;  
inspection of employment records.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

453       (1) A person may not perform wrecker services in this  
454       state unless he or she is an employee or ultimate equitable  
455       owner of a wrecker company that is registered with the  
456       department under this chapter and those wrecker services are  
457       performed on behalf of the wrecker company.

458       (2) (a) A person may not perform wrecker services or  
459       specialized wrecker services for a wrecker company for more than  
460       6 months after first being employed by, or becoming an ultimate  
461       equitable owner of, the wrecker company without being certified  
462       as a wrecker operator under this chapter.

463       (b) A wrecker operator certified under this chapter may  
464       not perform a specialized wrecker service for a wrecker company  
465       unless the wrecker operator's certification includes an  
466       endorsement for that specialized wrecker service.

467       (4) The department may, at any time during business hours,  
468       enter any business location of a wrecker company and examine the  
469       company's books or records. If the department reasonably  
470       believes a violation of this chapter has occurred or is  
471       occurring, the department may subpoena any necessary books or  
472       records.

473  
474  
475       ===== D I R E C T O R Y   A M E N D M E N T =====

476       Remove line(s) 263 and insert:  
477       508.116, 508.117, 508.118, and 508.119, is created to  
478

479       ===== T I T L E   A M E N D M E N T =====

480       Remove line(s) 83-107 and insert:  
481       other funds; creating s. 508.118, F.S.; authorizing counties and  
482       municipalities to enact ordinances governing wrecker operators;  
483       providing for the department to enter into a cooperative



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

484 agreement with a county or municipality for the referral,  
485 investigation, and prosecution of consumer complaints or  
486 enforcement of specified wrecker services provisions; creating  
487 s. 508.119, F.S.; requiring that a wrecker company maintain  
488 records of its services and operators; requiring organizations  
489 that conduct operator certification or continuing education  
490 courses to maintain records on each person who successfully  
491 completes one of the courses; authorizing inspection of records  
492 by the department; creating s. 508.104, F.S.; prohibiting  
493 persons from owning, operating, or being issued a local business  
494 tax receipt on behalf of a wrecker company without first  
495 registering with the department; requiring registration prior to  
496 issuance or renewal of local business tax receipt; excluding  
497 certain motor vehicle dealers; creating s. 508.110, F.S.;  
498 prohibiting the performance of wrecker services after a certain  
499 date unless the operator is in the employ of a company that is  
500 registered; requiring wrecker operators to be certified;

HB 93

2007

1                               A bill to be entitled

2       An act relating to wrecker services; creating chapter 508,

3       F.S.; providing for regulatory oversight of wrecker

4       services by the Department of Agriculture and Consumer

5       Services; creating s. 508.101, F.S.; providing

6       definitions; creating s. 508.102, F.S.; creating the

7       Wrecker Operator Advisory Council within the Department of

8       Agriculture and Consumer Services; providing for

9       membership, terms, and organization; providing for meeting

10      procedures and recordkeeping; providing for reimbursement

11      for travel and per diem expenses; directing the department

12      to provide support services for the council; directing the

13      council to review rules adopted by the department and to

14      advise the department on matters relating to standards and

15      practices in the wrecker industry; creating s. 508.103,

16      F.S.; authorizing the department to adopt rules; creating

17      s. 508.105, F.S.; requiring wrecker companies to register

18      annually with the department; providing for the

19      registration application; providing for processing of

20      fingerprints by the Department of Law Enforcement;

21      requiring fees for processing; providing for issuance of

22      registration certificate; requiring display of the

23      certificate; providing requirements for advertisements;

24      requiring notification of changes in registration

25      information; requiring certain fees to be paid; requiring

26      certain companies to obtain a local business tax receipt

27      prior to registration renewal; requiring insurance

28      coverage; requiring the department to notify the

HB 93

2007

29 Department of Highway Safety and Motor Vehicles when a  
 30 registration has been suspended or revoked; creating s.  
 31 508.106, F.S.; authorizing the Department of Agriculture  
 32 and Consumer Services to deny, revoke, or refuse to renew  
 33 the registration of a wrecker company under certain  
 34 circumstances; creating s. 508.1061, F.S.; requiring a  
 35 wrecker company to accept certain forms of payment;  
 36 creating s. 508.107, F.S.; requiring the department to  
 37 establish a certification program for wrecker operators;  
 38 providing for the council to approve certification courses  
 39 and the organizations conducting the courses; providing  
 40 for the council to prescribe course curricula; providing  
 41 requirements for courses; requiring each course to include  
 42 an examination approved by the council; providing criteria  
 43 for the examination; requiring the organization conducting  
 44 the course to issue the certificate to the wrecker  
 45 operator; creating s. 508.108, F.S.; requiring each  
 46 certification course to offer optional specialized wrecker  
 47 services instruction, training, and examinations;  
 48 describing specialized wrecker services; directing the  
 49 department to adopt rules prescribing specific standards  
 50 to further define each specialized wrecker service;  
 51 requiring council approval of the instruction, training,  
 52 and examination; requiring the organization conducting the  
 53 course to issue the certificate to the wrecker operator;  
 54 creating s. 508.109, F.S.; providing for form and content  
 55 of certification cards; authorizing the department to  
 56 adopt rules for issuance of certification cards to an

HB 93

2007

57 | operator who completes a certification course and passes a  
58 | certification examination in another state or completed a  
59 | certification course and passed a certification  
60 | examination in this state during a certain time period;  
61 | authorizing the department to adopt rules for issuance of  
62 | endorsements for specialized services to a wrecker  
63 | operator who completed instruction and training for a  
64 | specialized wrecker service and passed an endorsement  
65 | examination for that specialized wrecker service during a  
66 | certain time period; providing for approval by the council  
67 | of out-of-state certification instructions, training, and  
68 | examinations; providing for expiration of certification;  
69 | requiring certification cards to be issued by the  
70 | organizations conducting the courses; creating s. 508.111,  
71 | F.S.; providing requirements for recertification;  
72 | providing for a continuing education program to be  
73 | established by the department; providing for curricula and  
74 | examinations to be prescribed by the council; requiring  
75 | course approval by the council; providing for a  
76 | certificate to be issued by the training organization to  
77 | the wrecker operator; creating s. 508.112, F.S.;  
78 | prohibiting certain acts; creating ss. 508.113 and  
79 | 508.114, F.S.; providing administrative and civil  
80 | penalties; creating s. 508.116, F.S.; providing for  
81 | registration and renewal fees; creating s. 508.117, F.S.;  
82 | providing for deposit and use of fees, penalties, and  
83 | other funds; creating s. 508.118, F.S.; providing that the  
84 | chapter does not apply to recovery agents; creating s.

HB 93

2007

85        508.119, F.S.; authorizing counties and municipalities to  
 86        enact ordinances governing wrecker operators; providing  
 87        for the department to enter into a cooperative agreement  
 88        with a county or municipality for the referral,  
 89        investigation, and prosecution of consumer complaints or  
 90        enforcement of specified wrecker services provisions;  
 91        creating s. 508.120, F.S.; requiring that a wrecker  
 92        company maintain records of its services and operators;  
 93        requiring organizations that conduct operator  
 94        certification or continuing education courses to maintain  
 95        records on each person who successfully completes one of  
 96        the courses; authorizing inspection of records by the  
 97        department; creating s. 508.104, F.S.; prohibiting persons  
 98        from owning, operating, or being issued a local business  
 99        tax receipt on behalf of a wrecker company without first  
 100       registering with the department; requiring registration  
 101       prior to issuance or renewal of local business tax  
 102       receipt; excluding certain motor vehicle repair shops and  
 103       dealers; creating s. 508.110, F.S.; prohibiting the  
 104       performance of wrecker services after a certain date  
 105       unless the operator is in the employ of a company that is  
 106       registered; requiring wrecker operators to be certified;  
 107       providing exceptions for certain shops and organizations;  
 108       authorizing the department to inspect company records;  
 109       creating s. 508.115, F.S.; providing criminal penalties;  
 110       amending s. 120.80, F.S.; providing for appointment of a  
 111       hearing officer by the director of the Division of the  
 112       Florida Highway Patrol when a hearing is held to deny,

HB 93

2007

113        suspend, or remove a wrecker company from participating in  
 114        the wrecker allocation system; creating s. 205.1977, F.S.;  
 115        prohibiting a county or municipality from issuing or  
 116        renewing a business tax receipt for a wrecker company that  
 117        is not registered with the Department of Agriculture and  
 118        Consumer Services; amending s. 316.530, F.S., relating to  
 119        towing requirements; conforming terminology; amending s.  
 120        320.01, F.S.; redefining the term "wrecker" for purposes  
 121        of the Florida Statutes; amending s. 320.03, F.S.,  
 122        relating to withholding the motor vehicle registration  
 123        plate or revalidation sticker; providing for application  
 124        of provisions to wrecker companies rather than wrecker  
 125        operators; amending s. 320.0706, F.S.; requiring a wrecker  
 126        to display the registration license plate only on its  
 127        front; amending s. 320.0821, F.S.; revising requirements  
 128        for the issuance of wrecker license plates; requiring the  
 129        license plate to be displayed on the front of the wrecker;  
 130        amending s. 320.13, F.S., relating to dealer license  
 131        plates; conforming terminology; reenacting ss.  
 132        316.550(4)(a) and (9) and 320.08(5)(d) and (e), F.S.,  
 133        relating to special wrecker permits and license taxes, to  
 134        incorporate the amendment to s. 320.01, F.S., in  
 135        references thereto; amending s. 321.051, F.S.; revising  
 136        provisions for the Florida Highway Patrol wrecker operator  
 137        system; changing the designation to "wrecker allocation  
 138        system"; providing definitions; revising provisions that  
 139        authorize the Division of the Florida Highway Patrol  
 140        within the Department of Highway Safety and Motor Vehicles

141       to establish the system; revising requirements for the  
 142       system; limiting the system to using certain registered  
 143       wrecker companies; revising wrecker eligibility  
 144       requirements; revising provisions for procedures for  
 145       appeal of final orders by the department denying,  
 146       suspending, or revoking eligibility to participate;  
 147       prohibiting an unauthorized wrecker company and wrecker  
 148       operators dispatched by an unauthorized company from  
 149       engaging in certain activities; requiring those operators  
 150       to disclose certain information to the owner or operator  
 151       of a wrecked or disabled vehicle prior to towing;  
 152       providing penalties; providing for a law enforcement  
 153       officer to dispatch an authorized wrecker company other  
 154       than a company requested by the vehicle owner or operator  
 155       or to dispatch a company out of rotation; amending s.  
 156       323.001, F.S.; revising procedures for placement of a hold  
 157       on a vehicle at a storage facility; providing for  
 158       placement of a hold by a law enforcement agency; providing  
 159       definitions; revising provisions for payment of towing and  
 160       storage charges; revising rate limitation provisions;  
 161       amending s. 323.002, F.S.; revising provisions for county  
 162       and municipal wrecker operator systems; changing the  
 163       designation to "wrecker allocation systems"; providing  
 164       definitions; limiting the systems to using certain  
 165       registered wrecker companies; prohibiting an unauthorized  
 166       wrecker company and wrecker operators dispatched by an  
 167       unauthorized company from engaging in certain activities;  
 168       requiring those operators to disclose certain information

HB 93

2007

169       to the owner or operator of a wrecked or disabled vehicle  
 170       prior to towing; providing penalties; providing for a law  
 171       enforcement officer to dispatch an authorized wrecker  
 172       company other than a company requested by the vehicle  
 173       owner or operator or to dispatch a company out of  
 174       rotation; amending s. 713.78, F.S.; providing for claim of  
 175       lien by a wrecker company for recovering, removing, or  
 176       storing a vehicle or vessel; conforming provisions to  
 177       changes made by the act; providing definitions; requiring  
 178       notification to the vehicle or vessel owners, insurers,  
 179       and lienholders; providing for a law enforcement agency to  
 180       obtain information from the Department of Highway Safety  
 181       and Motor Vehicles and provide the information to the  
 182       wrecker company; providing notice procedures; providing  
 183       for content of the notice; providing for notice to the  
 184       agency of jurisdiction if the vehicle or vessel owner or  
 185       lienholder cannot be identified; revising procedures for  
 186       complaint by the vehicle or vessel owner; providing for  
 187       release of the vehicle or vessel; requiring damages,  
 188       attorney's fees, and costs to be awarded by the court;  
 189       requiring immediate payment of recovery, towing, and  
 190       storage fees to be ordered by the court; providing for  
 191       notice and sale of the vehicle or vessel by the wrecker  
 192       company; providing for distribution of proceeds; providing  
 193       for discharge of liens and issuance of certificate of  
 194       title; providing immunity from liability for a wrecker  
 195       company, its operators, and other employees or agents  
 196       under certain conditions; providing for a presumption of



197       the use of reasonable care; requiring wrecker company  
198       information to be printed on the wrecker; specifying that  
199       failure to make good faith, best efforts to comply with  
200       notice requirements precludes imposition of storage  
201       charges; requiring a wrecker company to provide access to  
202       the vehicle or vessel; requiring release of the vehicle,  
203       vessel, or personal property to the owner or agent of the  
204       owner; requiring the wrecker company to obtain a  
205       certificate of destruction in lieu of a certificate of  
206       title when the vehicle or vessel is to be dismantled,  
207       destroyed, or changed in such a manner that it is not the  
208       motor vehicle or vessel described in the certificate of  
209       title; providing for issuance of the certificate of  
210       destruction by the county tax collector; providing  
211       requirements for application for the certificate of  
212       destruction; providing for reassignment of the certificate  
213       of destruction; authorizing the Department of Highway  
214       Safety and Motor Vehicles to adopt rules; providing  
215       penalties for specified violations; authorizing the  
216       Department of Highway Safety and Motor Vehicles to inspect  
217       wrecker company records; directing the Department of  
218       Highway Safety and Motor Vehicles, upon notice of lien  
219       from a wrecker company, to place the name of the owner of  
220       the vehicle or vessel on the list of those persons who may  
221       not be issued a license plate or revalidation sticker for  
222       a motor vehicle; providing for forms for the notice of  
223       lien; providing for dispute by the owner; providing for  
224       the owner's name to be removed from the list of those

HB 93

2007

225 persons who may not be issued a license plate or  
 226 revalidation sticker for a motor vehicle; providing for  
 227 lien expiration; requiring a certificate of discharge to  
 228 be issued by the wrecker company; providing for certain  
 229 fees and charges; providing for application and  
 230 exceptions; clarifying that the amendments made by the act  
 231 do not affect the validity of prior liens; amending s.  
 232 715.07, F.S., revising provisions for the towing and  
 233 storage of vehicles and vessels parked on real property  
 234 without permission; providing definitions; providing  
 235 requirements for storage facility operation; providing  
 236 requirements for a wrecker company, its operators, and  
 237 other employees or agents; prohibiting a wrecker company,  
 238 a wrecker operator, or another employee or agent of a  
 239 wrecker company from paying or accepting payment for the  
 240 privilege of removing vehicles or vessels from a  
 241 particular location; revising requirements for tow-away  
 242 signs to be posted by property owners; requiring a wrecker  
 243 company to maintain rate schedules with the local law  
 244 enforcement agency and to post rates and contracts at its  
 245 storage facility; revising requirements for certain  
 246 signage on a wrecker; providing immunity from liability  
 247 for a wrecker company, its operators, and other employees  
 248 or agents if entry into the vehicle or vessel is performed  
 249 with reasonable care; revising provisions for release of  
 250 the vehicle or vessel; providing that failure to comply  
 251 with notice requirements precludes a wrecker company from  
 252 imposing certain towing or storage charges; providing

HB 93

2007

penalties; repealing s. 1.01(15), F.S., relating to the definition of the term "wrecker operator"; providing an appropriation and authorizing additional positions; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 508, Florida Statutes, consisting of sections 508.101, 508.102, 508.103, 508.105, 508.106, 508.1061, 508.107, 508.108, 508.109, 508.111, 508.112, 508.113, 508.114, 508.116, 508.117, 508.118, 508.119, and 508.120, is created to read:

CHAPTER 508

WRECKER SERVICES

508.101 Definitions.--As used in this chapter, the term:

(1) "Business entity" means any form of corporation, limited liability company, partnership, association, cooperative, joint venture, business trust, sole proprietorship, or self-employed person conducting business in this state.

(2) "Council" means the Wrecker Operator Advisory Council.

(3) "Department" means the Department of Agriculture and Consumer Services.

(4) "Specialized wrecker service" means a wrecker service described in s. 508.108. A wrecker operator is required to obtain the applicable certification endorsement before performing a specialized wrecker service.

(5) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls 10 percent or more of

HB 93

2007

an ownership interest in a wrecker company, regardless of whether the natural person owns or controls the ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, business entities, or any combination thereof.

(6) "Vehicle" means any vehicle of a type that may be registered under chapter 320 for operation on the roads of this state, regardless of whether the vehicle is actually registered. The term does not include a mobile home or manufactured home as defined in s. 320.01.

(7) "Vessel" means any type of watercraft, barge, or airboat, however described, used or capable of being used as a means of transportation on water, other than a seaplane or a documented vessel as defined in s. 327.02.

(8) "Wrecker" has the same meaning ascribed in s. 320.01.

(9) "Wrecker company" means a business entity engaged for hire in the business of towing, carrying, or transporting vehicles or vessels by wrecker upon the streets and highways of this state. The term does not include a person regularly engaged in the business of transporting mobile homes.

(10) "Wrecker operator" means a person who performs wrecker services.

(11) "Wrecker services" means towing, carrying, or otherwise transporting vehicles or vessels by wrecker upon the streets and highways of this state for hire. The term includes, but is not limited to, each of the following:

(a) Driving a wrecker.

(b) Loading, securing, and unloading a vehicle or vessel

HB 93

2007

on a wrecker using a boom, winch, car carrier, or other similar  
equipment.

(c) Towing or removal of a wrecked, disabled, or abandoned  
vehicle under the Florida Highway Patrol wrecker allocation  
system pursuant to s. 321.051 or under a county or municipal  
wrecker allocation system pursuant to s. 323.002.

(d) Towing, recovery, or removal of a vehicle or vessel  
under s. 713.78.

(e) Towing, transportation, or removal of a vehicle or  
vessel parked on real property without permission under s.  
715.07.

(f) Recovery of a vehicle or vessel.

508.102 Wrecker Operator Advisory Council.--

(1) The Wrecker Operator Advisory Council is created  
within the department. The council shall advise and assist the  
department in administering this chapter.

(2)(a) The council shall be composed of six members  
appointed by the Commissioner of Agriculture. In addition, the  
executive director of the Professional Wrecker Operators of  
Florida, Inc., shall serve ex officio as a voting member of the  
council.

(b) Three members of the council must each be an ultimate  
equitable owner of a wrecker company who has been an ultimate  
equitable owner of that company for at least 5 years before his  
or her appointment; one member must be a wrecker operator who is  
not an ultimate equitable owner of a wrecker company and who has  
been a wrecker operator for at least 5 years before his or her  
appointment; and two members must be laypersons. Each member

HB 93

2007

must be a resident of this state. This paragraph expires July 1, 2013.

(c) Effective July 1, 2013, three members of the council must each be an ultimate equitable owner of a wrecker company registered under this chapter who has been an ultimate equitable owner of that company registered for at least 5 years before his or her appointment; one member must be a wrecker operator certified under this chapter who is not an ultimate equitable owner of a wrecker company and who has been a certified wrecker operator for at least 5 years before his or her appointment; and two members must be laypersons. Each member must be a resident of this state.

(3) The term of each member of the council is 4 years, except, to establish staggered terms, two members who are owners of wrecker companies and one layperson shall be appointed initially for a 2-year term. Members may be reappointed for additional terms not to exceed 8 years of consecutive service. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4)(a) From among its members, the council shall annually elect a chair, who shall preside over the meetings of the council, and a vice chair.

(b) In conducting its meetings, the council shall use accepted rules of procedure. The department shall keep a complete record of each meeting showing the names of members present and the actions taken. These records and other documents regarding matters within the jurisdiction of the council must be kept on file with the department.

HB 93

2007

(5) The members of the council shall serve without compensation but are entitled to reimbursement of travel and per diem expenses under s. 112.061.

(6) The department shall provide administrative and staff support services relating to the functions of the council.

(7) The council shall review the rules adopted by the department to administer this chapter and shall advise the department on matters relating to industry standards and practices and other issues that require technical expertise and consultation or that promote better consumer protection in the wrecker industry.

508.103 Rulemaking authority.--The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.

508.105 Registration requirements; renewal of registrations.--

(1) Each wrecker company engaged or attempting to engage for hire in the business of towing, carrying, or transporting vehicles or vessels by wrecker upon the streets and highways of this state must annually register with the department on forms prescribed by the department. The application for registration must include at least the following information:

(a) The name and federal employer identification number of the wrecker company.

(b) The mailing address, physical address, and telephone number of the wrecker company's primary place of business.

(c) The fictitious name under which the wrecker company transacts business in this state.

HB 93

2007

(d) The full name, residence address, business address, and telephone number of the applicant. If the applicant is other than a natural person, the application must also contain the full name, residence address, business address, telephone number, and federal employer identification number, if applicable, of each ultimate equitable owner of the business entity and each officer, director, partner, manager, member, or managing member of the entity.

(e) If the applicant is other than a natural person, the full name of the business entity's registered agent and the address of the registered office for service of process.

(f) The physical address and telephone number of each business location and each storage facility where the wrecker company stores towed vehicles or vessels.

(2) Each initial and renewal application for registration must be accompanied by the registration fee prescribed in s. 508.116.

(3) Each initial application for registration must be accompanied by a complete set of the applicant's fingerprints taken by a law enforcement agency. If the applicant is other than a natural person, a complete set of fingerprints must be filed for each ultimate equitable owner of the business entity and each officer, director, partner, manager, member, or managing member of the entity. The department shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The applicant must also pay the Department



HB 93

2007

421 of Law Enforcement a fingerprint processing fee of \$23 for state  
 422 processing, and the amount of the fee charged by the Federal  
 423 Bureau of Investigation for federal processing, for each  
 424 applicant's name submitted. Registration renewal applications  
 425 need not be accompanied by a set of fingerprints for an  
 426 individual who previously submitted a set of fingerprints to the  
 427 department as part of a prior year's registration application.

428       (4) The department shall review each application in  
 429 accordance with s. 120.60 and shall issue a registration  
 430 certificate, in the form and size prescribed by the department,  
 431 to each wrecker company whose application is approved. The  
 432 certificate must show at least the name and address of the  
 433 wrecker company and the registration number. The registration  
 434 certificate must be prominently displayed in the wrecker  
 435 company's primary place of business.

436       (5) Each advertisement of a wrecker company must include  
 437 the phrase "Fla. Wrecker Co. Reg. No.        ." For the purpose of  
 438 this subsection, the term "advertisement" means a printed or  
 439 graphic statement made in a newspaper or other publication or  
 440 contained in any notice, handbill, or sign, including signage on  
 441 a vehicle, flyer, catalog, or letter.

442       (6) A registration is invalid for a wrecker company  
 443 transacting business at a place other than the location  
 444 specified in the registration application unless the department  
 445 is first notified in writing before the change of location. A  
 446 registration issued under this chapter is not transferable or  
 447 assignable, and a wrecker company may not conduct business under  
 448 a name other than the name registered. A wrecker company

449 desiring to change its registered name, location, or registered  
450 agent for service of process at a time other than upon renewal  
451 of registration must notify the department of the change.

452 (7)(a) Each registration must be renewed annually on or  
453 before the expiration date of the current registration. A late  
454 fee of \$25 must be paid, in addition to the registration fee or  
455 any other penalty, for a registration renewal application that  
456 is received by the department after the expiration date of the  
457 current registration. The department may not issue a  
458 registration until all fees are paid.

459 (b) A wrecker company whose primary place of business is  
460 located within a county or municipality that requires, by local  
461 ordinance, a local business tax receipt under chapter 205 may  
462 not renew a registration under this chapter unless the wrecker  
463 company obtains the business tax receipt from the county or  
464 municipality.

465 (8) Each wrecker company must provide the department with  
466 a certificate of insurance for the insurance coverage required  
467 under s. 627.7415 before the department may issue the  
468 certificate for an initial or renewal registration. The  
469 department must be named as a certificateholder on the insurance  
470 certificate and must be notified at least 30 days before any  
471 change in insurance coverage.

472 (9) The department shall notify the Department of Highway  
473 Safety and Motor Vehicles when a registration issued under this  
474 chapter has been suspended or revoked by order of the  
475 department. Notification must be sent within 10 days after the  
476 department issues the suspension or revocation order.

HB 93

2007

477        508.106 Denial of registration.--The department may deny,  
 478        revoke, or refuse to renew the registration of a wrecker company  
 479        based upon a determination that the applicant or, if the  
 480        applicant is other than a natural person, the wrecker company or  
 481        any of its ultimate equitable owners, officers, directors,  
 482        partners, managers, members, or managing members has:

483        (1) Not met the requirements for registration under this  
 484        chapter;

485        (2) Been convicted or found guilty of, regardless of  
 486        adjudication, or pled guilty or nolo contendere to, a felony  
 487        within the last 10 years;

488        (3) Been convicted or found guilty of, regardless of  
 489        adjudication, or pled guilty or nolo contendere to, a crime  
 490        within the last 10 years involving repossession of a motor  
 491        vehicle under chapter 493, repair of a motor vehicle under ss.  
 492        559.901-559.9221, theft of a motor vehicle under s. 812.014,  
 493        carjacking under s. 812.133, operation of a chop shop under s.  
 494        812.16, failure to maintain records of motor vehicle parts and  
 495        accessories under s. 860.14, violations relating to airbags  
 496        under s. 860.145 or use of fake airbags under s. 860.146,  
 497        overcharging for repairs and parts under s. 860.15, or a  
 498        violation of towing or storage requirements for a motor vehicle  
 499        under this chapter, s. 321.051, chapter 323, s. 713.78, or s.  
 500        715.07;

501        (4) Not satisfied a civil fine or penalty arising out of  
 502        an administrative or enforcement action brought by the  
 503        department, another governmental agency, or a private person  
 504        based upon conduct involving a violation of this chapter;

HB 93

2007

(5) Pending against him or her a criminal, administrative, or enforcement proceeding in any jurisdiction based upon conduct involving a violation of this chapter; or

(6) Had a judgment entered against him or her in an action brought by the department under this chapter.

508.1061 Acceptable forms of payment.--A wrecker company shall accept a minimum of two of the three following forms of payment:

(1) Cash, cashier's check, money order, or traveler's check.

(2) Valid personal check, showing upon its face the name and address of the vehicle or vessel owner or authorized representative.

(3) Valid credit card, including, but not limited to, Visa or MasterCard.

508.107 Wrecker operator certification program.--

(1) The department, in consultation with the council, shall establish a wrecker operator certification program by December 31, 2007. Under this program, the council shall approve certification courses for wrecker operators conducted by approved organizations. The council shall prescribe the minimum curricula for these courses, which must comprise at least 16 hours, equally apportioned between theoretical instruction and practical training. The council must approve each organization and its certification course before the course is accepted for certification of wrecker operators under this chapter.

(2) Each approved wrecker operator certification course must include a certification examination demonstrating a wrecker

HB 93

2007

operator's knowledge, skills, and abilities in performing wrecker services and proficiency in the subject matter of the certification course. The council must approve each certification examination before the examination is accepted for certification of wrecker operators under this chapter.

(3) Each organization conducting an approved wrecker operator certification course must issue on forms prescribed by the department a certificate to each wrecker operator who completes the approved certification course and passes the approved certification examination.

508.108 Specialized wrecker services.--

(1) In addition to the minimum curricula for certification of wrecker operators, each approved certification course must offer optional instruction, training, and examination of wrecker operators for each of the following specialized wrecker services:

(a) Light duty.--Towing and winching a passenger vehicle and uprighting an overturned passenger vehicle, including the proper use of chains, wire rope, and straps.

(b) Medium duty.--Towing and winching a medium-sized commercial vehicle and uprighting an overturned medium-sized commercial vehicle.

(c) Heavy duty.--Towing and winching a standard large-sized commercial vehicle and uprighting an overturned standard large-sized commercial vehicle.

(d) Ultra-heavy duty.--Towing and winching a specialty large-sized commercial vehicle or another complex vehicle and uprighting an overturned specialty large-sized commercial

HB 93

2007

vehicle or another complex vehicle.

(e) Rollback wrecker.--Proper loading, securing, transporting, and unloading of a vehicle on a flatbed-rollback wrecker.

(f) Hazardous materials.--Awareness of hazardous materials. Instruction and training for this wrecker service must comprise at least 8 hours in order to be approved.

(g) Air cushions.--Proper use of air cushions in the recovery of a heavy-duty vehicle.

(2) The department shall adopt rules prescribing specific standards to further define each of the specialized wrecker services described in subsection (1). The council must approve the instruction, training, and examination for a specialized wrecker service before the specialized wrecker service is accepted for endorsement of a wrecker operator's certification under this chapter.

(3) Each organization conducting an approved wrecker operator certification course must issue on forms prescribed by the department a certificate to each wrecker operator who completes the approved instruction and training for a specialized wrecker service and passes the approved endorsement examination for that specialized wrecker service.

508.109 Certification cards.--

(1) Each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the approved certification course and passes the approved certification examination. The department must approve the form of the certification cards

589 issued by each organization. Each certification card must  
 590 include the wrecker operator's name, a color photograph or  
 591 digital image of the wrecker operator, and the expiration date  
 592 of the certification card.

593 (2) Each certification card must also include the wrecker  
 594 operator's applicable endorsements for those specialized wrecker  
 595 services for which the wrecker operator completed the approved  
 596 instruction and training and passed the approved endorsement  
 597 examination.

598 (3)(a) The department may adopt rules governing the  
 599 issuance of a certification card to a wrecker operator who:

600 1. Completes a certification course and passes a  
 601 certification examination in another state, which course and  
 602 examination are substantially equivalent to the approved  
 603 certification courses and approved certification examinations in  
 604 this state.

605 2. Completed a certification course and passed a  
 606 certification examination in this state between January 1, 2003,  
 607 and December 31, 2007, which course and examination are  
 608 substantially equivalent to the approved certification courses  
 609 and the approved certification examinations. This subparagraph  
 610 expires July 1, 2008.

611 3. Completed instruction and training for a specialized  
 612 wrecker service and passed an endorsement examination for that  
 613 specialized wrecker service between January 1, 2003, and  
 614 December 31, 2007, which instruction, training, and examination  
 615 are substantially equivalent to the approved instruction and  
 616 training and the approved endorsement examinations. This

HB 93

2007

subparagraph expires July 1, 2008.

(b) For the purposes of this subsection, the council shall approve each certification examination in another state, and shall approve the instruction, training, and examination for each specialized wrecker service in another state, that the council determines are substantially equivalent to the approved certification courses and approved certification examinations in this state or to the approved instruction, training, and endorsement examinations for a specialized wrecker service in this state.

(4) Each certification card expires 5 years after the date of issuance.

(5) Certification cards shall be issued by the organizations conducting approved wrecker operator certification courses. The department is not responsible for issuing certification cards or for the costs associated with the issuance of certification cards.

508.111 Renewal of certification; continuing education requirements.--

(1) The department, in consultation with the council, shall establish a continuing education program for the recertification of wrecker operators by December 31, 2008. In order to renew a wrecker operator's certification card, an operator must complete a continuing education course. The council must prescribe the minimum curricula and proper examination for each continuing education course, each of which must be at least 8 hours in length. The council shall approve each organization, and the continuing education course it



HB 93

2007

proposes to offer, before the course is approved for  
recertifying wrecker operators.

(2) Each organization conducting an approved wrecker  
operator continuing education course must issue, on forms  
prescribed by the department, a certificate to each wrecker  
operator who completes the approved course and passes an  
approved recertification examination.

508.112 Prohibited acts.--It is a violation of this  
chapter for a person to:

(1) Charge rates that exceed the maximum rates imposed by  
the ordinances of the respective county or municipality under  
ss. 125.0103(1)(c) and 166.043(1)(c).

(2) Violate s. 321.051, relating to the Florida Highway  
Patrol wrecker allocation system.

(3) Violate s. 323.002, relating to county and municipal  
wrecker allocation systems.

(4) Violate s. 713.78, relating to liens for recovering,  
towing, or storing vehicles and vessels.

(5) Violate s. 715.07, relating to towing or removing  
vehicles and vessels parked on real property without permission.

(6) Refuse to allow a law enforcement officer to inspect a  
towing and storage facility as required in s. 812.055.

(7) Allow a person who is not certified as a wrecker  
operator under this chapter to perform wrecker services or  
specialized wrecker services for the wrecker company for more  
than 6 months after first being employed by, or becoming an  
ultimate equitable owner of, the wrecker company.

(8) Allow a wrecker operator certified under this chapter

HB 93

2007

to perform a specialized wrecker service for the wrecker company  
if the wrecker operator's certification does not include an  
endorsement for that specialized wrecker service.

(9) Perform an act otherwise prohibited by this chapter or  
fail to perform an act otherwise required by this chapter.

508.113 Administrative penalties; inspection of records.--

(1) The department may take one or more of the following  
actions if the department finds that a person has violated this  
chapter or the rules or orders issued under this chapter:

(a) Issue a notice of noncompliance under s. 120.695.

(b) Impose an administrative fine not to exceed \$5,000 for  
each act or omission.

(c) Direct the person to cease and desist specified  
activities.

(d) Refuse to register the wrecker company or suspend or  
revoke the wrecker company's registration.

(e) Place the wrecker company on probation for a period of  
time, subject to the conditions specified by the department.

(2) Chapter 120 shall govern an administrative proceeding  
resulting from an order imposing a penalty specified in  
subsection (1).

508.114 Civil penalties.--The department may bring a civil  
action in a court of competent jurisdiction to recover any  
penalties or damages allowed in this chapter and for injunctive  
relief to enforce compliance with this chapter. The department  
may seek a civil penalty of up to \$5,000 for each violation of  
this chapter and may seek restitution for and on behalf of any  
owner of a vehicle or vessel who is aggrieved or injured by a

HB 93

2007

violation of this chapter.

508.116 Fees.--The department shall adopt by rule a fee schedule not to exceed the following amounts:

(1) Wrecker company registration fee: \$495.

(2) Wrecker company registration renewal fee: \$495.

508.117 General Inspection Trust Fund; payments.--All fees, penalties, or other funds collected by the department under this chapter must be deposited in the General Inspection Trust Fund and may only be used for the purpose of administering this chapter.

508.118 Recovery agents; exemption.--This chapter does not apply to a person licensed under chapter 493 performing repossession services.

508.119 County and municipal ordinances.--A county or municipality may enact ordinances governing the business of transporting vehicles or vessels by wrecker that are more restrictive than this chapter. This section does not limit the authority of a political subdivision to impose regulatory fees or charges or to levy local business taxes under chapter 205. The department may enter into a cooperative agreement with any county or municipality that provides for the referral, investigation, and prosecution of consumer complaints alleging violations of this chapter. The department is authorized to delegate enforcement of this chapter to any county or municipality entering into a cooperative agreement.

508.120 Records.--

(1) Each wrecker company shall maintain records of its wrecker services for at least 12 months. These records shall be

HB 93

2007

maintained at the wrecker company's principal place of business.

(2) Each wrecker company shall maintain records on each of its wrecker operators sufficient to demonstrate that the operator has successfully completed an approved wrecker operator certification course or an approved wrecker operator continuing education course and is certified to perform wrecker services. These records shall be maintained at the wrecker company's principal place of business for as long as the operator is employed by the wrecker company and for at least 6 months thereafter.

(3) Each organization approved to conduct a wrecker operator certification course or approved to offer a wrecker operator continuing education course shall maintain records on each person who successfully completes one of the courses. The records shall be maintained at the organization's principal place of business for at least 5 years. The department may, at any time during normal business hours, enter the organization's principal place of business to examine the records.

Section 2. Effective January 1, 2008, section 508.104, Florida Statutes, is created to read:

508.104 Wrecker companies; registration required.--

(1) A person may not own, operate, solicit business for, advertise services for, or otherwise engage for hire in the business of a wrecker company in this state unless that person is registered with the department under this chapter.

(2) A person applying for or renewing a local business tax receipt to engage for hire in the business of a wrecker company must exhibit a current registration certificate from the

HB 93

2007

department before the local business tax receipt may be issued  
or reissued under chapter 205.

(3) This section does not apply to a motor vehicle repair  
shop registered with the department under s. 559.904 that  
derives at least 80 percent of its gross sales from motor  
vehicle repairs or to any franchised motor vehicle dealer  
licensed pursuant to s. 320.27 when wrecker services are  
incidental to the operation of the franchise.

Section 3. Effective January 1, 2008, section 508.110,  
Florida Statutes, is created to read:

508.110 Wrecker operators; certification required;  
inspection of employment records.--

(1) A person may not perform wrecker services in this  
state unless he or she is an employee or ultimate equitable  
owner of a wrecker company that is registered with the  
department under this chapter and those wrecker services are  
performed on behalf of the wrecker company.

(2)(a) A person may not perform wrecker services or  
specialized wrecker services for a wrecker company for more than  
6 months after first being employed by, or becoming an ultimate  
equitable owner of, the wrecker company without being certified  
as a wrecker operator under this chapter.

(b) A wrecker operator certified under this chapter may  
not perform a specialized wrecker service for a wrecker company  
unless the wrecker operator's certification includes an  
endorsement for that specialized wrecker service.

(3)(a) Notwithstanding subsections (1) and (2), a person  
may perform wrecker services or specialized wrecker services in

HB 93

2007

this state if he or she is an employee or ultimate equitable owner of a motor vehicle repair shop registered with the department under s. 559.904 and those wrecker services or specialized wrecker services are performed on behalf of the motor vehicle repair shop.

(b) Notwithstanding subsections (1) and (2), a person may perform wrecker services or specialized wrecker services in this state if those wrecker services or specialized wrecker services are performed on behalf of a religious organization that holds a current exemption from federal taxation or that is not required to apply for recognition of its exemption under s. 501 of the Internal Revenue Code.

(4) The department may, at any time during business hours, enter any business location of a wrecker company and examine the company's books or records. If the department reasonably believes a violation of this chapter has occurred or is occurring, the department may subpoena any necessary books or records.

Section 4. Effective July 1, 2008, section 508.115, Florida Statutes, is created to read:

508.115 Criminal penalties.--

(1) A person who violates s. 508.104(1) by operating a wrecker company in this state without being registered with the department under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who violates s. 508.110(1) by performing wrecker services in this state without being an employee or

HB 93

2007

ultimate equitable owner of a wrecker company that is registered with the department under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Effective January 1, 2008, paragraph (b) of subsection (8) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.--

(8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.--

(b) Wrecker companies ~~operators~~.--Notwithstanding s. 120.57(1)(a), hearings held by the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles to deny, suspend, or remove a wrecker company ~~operator~~ from participating in the wrecker allocation ~~rotation~~ system established under ~~by~~ s. 321.051 need not be conducted by an administrative law judge assigned by the division. These hearings shall be held by a hearing officer appointed by the director of the Division of the Florida Highway Patrol.

Section 6. Effective January 1, 2008, section 205.1977, Florida Statutes, is created to read:

205.1977 Wrecker companies; consumer protection.--A county or municipality may not issue or renew a business tax receipt for the operation of a wrecker company under chapter 508 unless the wrecker company exhibits a current registration from the Department of Agriculture and Consumer Services.

Section 7. Subsection (3) of section 316.530, Florida Statutes, is amended to read:

316.530 Towing requirements.--

HB 93

2007

841           (3) Whenever a motor vehicle becomes disabled upon the  
842 highways of this state and a wrecker ~~or tow truck~~ is required to  
843 remove it to a repair shop or other appropriate location, if the  
844 combined weights of those two vehicles and the loads thereon  
845 exceed the maximum allowable weights as established by s.  
846 316.535, no penalty shall be assessed either vehicle or driver.  
847 However, this exception shall not apply to the load limits for  
848 bridges and culverts established by the department as provided  
849 in s. 316.555.

850           Section 8. Subsection (40) of section 320.01, Florida  
851 Statutes, is amended to read:

852           320.01 Definitions, general.--As used in the Florida  
853 Statutes, except as otherwise provided, the term:

854           (40) "Wrecker" means a tow truck or other ~~any~~ motor  
855 vehicle that is used to tow, carry, or otherwise transport ~~motor~~  
856 vehicles or vessels upon the streets and highways of this state  
857 and that is equipped for that purpose with a boom, winch, car  
858 carrier, or other similar equipment.

859           Section 9. Effective January 1, 2008, subsection (8) of  
860 section 320.03, Florida Statutes, is amended to read:

861           320.03 Registration; duties of tax collectors;  
862 International Registration Plan.--

863           (8) If the applicant's name appears on the list referred  
864 to in s. 316.1001(4), s. 316.1967(6), or s. 713.78(13), a  
865 license plate or revalidation sticker may not be issued until  
866 that person's name no longer appears on the list or until the  
867 person presents a receipt from the clerk showing that the fines  
868 outstanding have been paid. This subsection does not apply to



HB 93

2007

869 the owner of a leased vehicle if the vehicle is registered in  
870 the name of the lessee of the vehicle. The tax collector and the  
871 clerk of the court are each entitled to receive monthly, as  
872 costs for implementing and administering this subsection, 10  
873 percent of the civil penalties and fines recovered from such  
874 persons. As used in this subsection, the term "civil penalties  
875 and fines" does not include a wrecker company's ~~operator's~~ lien  
876 as described in s. 713.78(13). If the tax collector has private  
877 tag agents, such tag agents are entitled to receive a pro rata  
878 share of the amount paid to the tax collector, based upon the  
879 percentage of license plates and revalidation stickers issued by  
880 the tag agent compared to the total issued within the county.  
881 The authority of any private agent to issue license plates shall  
882 be revoked, after notice and a hearing as provided in chapter  
883 120, if he or she issues any license plate or revalidation  
884 sticker contrary to the provisions of this subsection. This  
885 section applies only to the annual renewal in the owner's birth  
886 month of a motor vehicle registration and does not apply to the  
887 transfer of a registration of a motor vehicle sold by a motor  
888 vehicle dealer licensed under this chapter, except for the  
889 transfer of registrations which is inclusive of the annual  
890 renewals. This section does not affect the issuance of the title  
891 to a motor vehicle, notwithstanding s. 319.23(7)(b).

892 Section 10. Section 320.0706, Florida Statutes, is amended  
893 to read:

894 320.0706 Display of license plates on trucks.--The owner  
895 of any commercial truck of gross vehicle weight of 26,001 pounds  
896 or more shall display the registration license plate on both the

HB 93

2007

front and rear of the truck in conformance with all the requirements of s. 316.605 that do not conflict with this section. The owner of a dump truck may place the rear license plate on the gate no higher than 60 inches to allow for better visibility. However, the owner of a truck tractor or a wrecker ~~must shall be required to~~ display the registration license plate only on the front of such vehicle.

Section 11. Subsection (1) of section 320.0821, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

320.0821 Wrecker license plates.--

(1) The department shall issue one a wrecker license plate, regardless of gross vehicle weight, to the owner of any motor vehicle that is used to tow, carry, or otherwise transport ~~motor vehicles~~ or vessels upon the streets and highways of this state and that is equipped for that purpose with a boom, winch, carrier, or other similar equipment, except a motor vehicle registered under the International Registration Plan, upon application and payment of the appropriate license tax and fees in accordance with s. 320.08(5)(d) or (e).

(5) A wrecker license plate must be displayed on the front of such vehicle.

Section 12. Effective January 1, 2008, subsection (1) of section 320.0821, Florida Statutes, as amended by this act, is amended to read:

320.0821 Wrecker license plates.--

(1) The department shall issue one wrecker license plate, regardless of gross vehicle weight, to the owner of a wrecker

HB 93

2007

~~any motor vehicle that is used to tow, carry, or otherwise  
transport vehicles or vessels upon the streets and highways of  
this state and that is equipped for that purpose with a boom,  
winch, carrier, or other similar equipment, except a motor  
vehicle registered under the International Registration Plan,  
upon application and payment of the appropriate license tax and  
fees in accordance with s. 320.08(5)(d) or (e).~~

Section 13. Paragraph (a) of subsection (1) of section  
320.13, Florida Statutes, is amended to read:

320.13 Dealer and manufacturer license plates and  
alternative method of registration.--

(1)(a) Any licensed motor vehicle dealer and any licensed  
mobile home dealer may, upon payment of the license tax imposed  
by s. 320.08(12), secure one or more dealer license plates,  
which are valid for use on motor vehicles or mobile homes owned  
by the dealer to whom such plates are issued while the motor  
vehicles are in inventory and for sale, or while being operated  
in connection with such dealer's business, but are not valid for  
use for hire. Dealer license plates may not be used on any ~~tow~~  
~~truck or wrecker~~ as defined in s. 320.01 unless the ~~tow truck or~~  
wrecker is being demonstrated for sale, and the dealer license  
plates may not be used on a vehicle used to transport another  
motor vehicle for the motor vehicle dealer.

Section 14. For the purpose of incorporating the amendment  
made by this act to section 320.01, Florida Statutes, in  
references thereto, paragraph (a) of subsection (4) and  
subsection (9) of section 316.550, Florida Statutes, are  
reenacted to read:

HB 93

2007

953            316.550   Operations not in conformity with law; special  
954   permits.--

955            (4)(a)   The Department of Transportation may issue a  
956   wrecker special blanket permit to authorize a wrecker as defined  
957   in s. 320.01(40) to tow a disabled vehicle as defined in s.  
958   320.01(38) where the combination of the wrecker and the disabled  
959   vehicle being towed exceeds the maximum weight limits as  
960   established by s. 316.535.

961            (9)   Whenever any motor vehicle, or the combination of a  
962   wrecker as defined in s. 320.01(40) and a towed motor vehicle,  
963   exceeds any weight or dimensional criteria or special  
964   operational or safety stipulation contained in a special permit  
965   issued under the provisions of this section, the penalty  
966   assessed to the owner or operator shall be as follows:

967            (a)   For violation of weight criteria contained in a  
968   special permit, the penalty per pound or portion thereof  
969   exceeding the permitted weight shall be as provided in s.  
970   316.545.

971            (b)   For each violation of dimensional criteria in a  
972   special permit, the penalty shall be as provided in s. 316.516  
973   and penalties for multiple violations of dimensional criteria  
974   shall be cumulative except that the total penalty for the  
975   vehicle shall not exceed \$1,000.

976            (c)   For each violation of an operational or safety  
977   stipulation in a special permit, the penalty shall be an amount  
978   not to exceed \$1,000 per violation and penalties for multiple  
979   violations of operational or safety stipulations shall be  
980   cumulative except that the total penalty for the vehicle shall

HB 93

2007

not exceed \$1,000.

(d) For violation of any special condition that has been prescribed in the rules of the Department of Transportation and declared on the permit, the vehicle shall be determined to be out of conformance with the permit and the permit shall be declared null and void for the vehicle, and weight and dimensional limits for the vehicle shall be as established in s. 316.515 or s. 316.535, whichever is applicable, and:

1. For weight violations, a penalty as provided in s. 316.545 shall be assessed for those weights which exceed the limits thus established for the vehicle; and

2. For dimensional, operational, or safety violations, a penalty as established in paragraph (c) or s. 316.516, whichever is applicable, shall be assessed for each nonconforming dimensional, operational, or safety violation and the penalties for multiple violations shall be cumulative for the vehicle.

Section 15. For the purpose of incorporating the amendment made by this act to section 320.01, Florida Statutes, in references thereto, paragraphs (d) and (e) of subsection (5) of section 320.08, Florida Statutes, are reenacted to read:

320.08 License taxes.--Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

HB 93

2007

1008           (5)   SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;  
1009 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--

1010           (d)   A wrecker, as defined in s. 320.01(40), which is used  
1011 to tow a vessel as defined in s. 327.02(39), a disabled,  
1012 abandoned, stolen-recovered, or impounded motor vehicle as  
1013 defined in s. 320.01(38), or a replacement motor vehicle as  
1014 defined in s. 320.01(39): \$30 flat.

1015           (e)   A wrecker, as defined in s. 320.01(40), which is used  
1016 to tow any motor vehicle, regardless of whether or not such  
1017 motor vehicle is a disabled motor vehicle as defined in s.  
1018 320.01(38), a replacement motor vehicle as defined in s.  
1019 320.01(39), a vessel as defined in s. 327.02(39), or any other  
1020 cargo, as follows:

1021           1.   Gross vehicle weight of 10,000 pounds or more, but less  
1022 than 15,000 pounds: \$87 flat.

1023           2.   Gross vehicle weight of 15,000 pounds or more, but less  
1024 than 20,000 pounds: \$131 flat.

1025           3.   Gross vehicle weight of 20,000 pounds or more, but less  
1026 than 26,000 pounds: \$186 flat.

1027           4.   Gross vehicle weight of 26,000 pounds or more, but less  
1028 than 35,000 pounds: \$240 flat.

1029           5.   Gross vehicle weight of 35,000 pounds or more, but less  
1030 than 44,000 pounds: \$300 flat.

1031           6.   Gross vehicle weight of 44,000 pounds or more, but less  
1032 than 55,000 pounds: \$572 flat.

1033           7.   Gross vehicle weight of 55,000 pounds or more, but less  
1034 than 62,000 pounds: \$678 flat.

HB 93

2007

1035           8. Gross vehicle weight of 62,000 pounds or more, but less  
1036 than 72,000 pounds: \$800 flat.

1037           9. Gross vehicle weight of 72,000 pounds or more: \$979  
1038 flat.

1039           Section 16. Effective January 1, 2008, section 321.051,  
1040 Florida Statutes, is amended to read:

1041           (Substantial rewording of section. See  
1042 s. 321.051, F.S., for present text.)

1043           321.051 Florida Highway Patrol wrecker allocation system;  
1044 penalties for operation outside of system.--

1045           (1) As used in this section, the term:

1046           (a) "Authorized wrecker company" means a wrecker company  
1047 designated by the division as part of its wrecker allocation  
1048 system.

1049           (b) "Division" means the Division of the Florida Highway  
1050 Patrol within the Department of Highway Safety and Motor  
1051 Vehicles.

1052           (c) "Unauthorized wrecker company" means a wrecker company  
1053 not designated by the division as part of its wrecker allocation  
1054 system.

1055           (d) "Wrecker company" has the same meaning ascribed in s.  
1056 508.101.

1057           (e) "Wrecker operator" has the same meaning ascribed in s.  
1058 508.101.

1059           (f) "Wrecker services" has the same meaning ascribed in s.  
1060 508.101.

1061           (2) (a) The division may establish within areas designated  
1062 by the division a wrecker allocation system, using qualified,

HB 93

2007

1063 reputable wrecker companies, for the removal from crash scenes  
1064 and the storage of wrecked or disabled vehicles when the owner  
1065 or operator is incapacitated or unavailable or leaves the  
1066 procurement of wrecker services to the officer at the scene and  
1067 for the removal and storage of abandoned vehicles.

1068 (b) The wrecker allocation system may use only wrecker  
1069 companies registered under chapter 508. Each reputable wrecker  
1070 company registered under chapter 508 is eligible for use in the  
1071 system if its equipment and wrecker operators meet the  
1072 recognized safety qualifications and mechanical standards set by  
1073 the division's rules for the size of vehicle they are designed  
1074 to handle. The division may limit the number of wrecker  
1075 companies participating in the wrecker allocation system.

1076 (c) The division may establish maximum rates for the  
1077 towing and storage of vehicles removed at the division's request  
1078 if those rates are not established by a county or municipality  
1079 under s. 125.0103 or s. 166.043. These rates are not rules for  
1080 the purpose of chapter 120; however, the Department of Highway  
1081 Safety and Motor Vehicles shall adopt rules prescribing the  
1082 procedures for setting these rates.

1083 (d) Notwithstanding chapter 120, a final order of the  
1084 Department of Highway Safety and Motor Vehicles denying,  
1085 suspending, or revoking a wrecker company's participation in the  
1086 wrecker allocation system may be appealed only in the manner and  
1087 within the time provided by the Florida Rules of Appellate  
1088 Procedure by a writ of certiorari issued by the circuit court in  
1089 the county in which the wrecker company's primary place of  
1090 business is located, as evidenced by the wrecker company's



HB 93

2007

registration under chapter 508.

(3) (a) An unauthorized wrecker company, its wrecker operators, or its other employees or agents may not monitor a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of dispatching its wrecker operator to drive by the scene of the vehicle in a manner described in paragraph (b) or paragraph (c). Any person who violates this paragraph commits a noncriminal violation, punishable as provided in s. 775.083.

(b) Except as provided in paragraph (c), a wrecker operator dispatched by an unauthorized wrecker company who drives by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company may not initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services or tow the vehicle. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) When a wrecker operator dispatched by an unauthorized wrecker company drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide wrecker services, the wrecker operator must disclose to the owner or operator of the vehicle that he or she was not dispatched by the authorized wrecker company designated as part of the wrecker allocation system and must disclose, in writing, what charges for towing and storage will apply before the vehicle is connected to the

HB 93

2007

1119 towing apparatus. Any person who violates this paragraph commits  
 1120 a misdemeanor of the second degree, punishable as provided in s.  
 1121 775.082 or s. 775.083.

1122 (d) A wrecker operator may not falsely identify himself or  
 1123 herself as being part of, or as being employed by a wrecker  
 1124 company that is part of, the wrecker allocation system at the  
 1125 scene of a wrecked or disabled vehicle. Any person who violates  
 1126 this paragraph commits a misdemeanor of the first degree,  
 1127 punishable as provided in s. 775.082 or s. 775.083.

1128 (4) This section does not prohibit or in any way prevent  
 1129 the owner or operator of a vehicle involved in a crash or  
 1130 otherwise disabled from contacting any wrecker company for the  
 1131 provision of wrecker services, regardless of whether the wrecker  
 1132 company is an authorized wrecker company. However, if a law  
 1133 enforcement officer determines that the disabled vehicle or  
 1134 vehicle cargo is a public safety hazard, the officer may, in the  
 1135 interest of public safety, dispatch an authorized wrecker  
 1136 company if the officer believes that the authorized wrecker  
 1137 company would arrive at the scene before the wrecker company  
 1138 requested by the owner or operator of the disabled vehicle or  
 1139 vehicle cargo.

1140 (5) A law enforcement officer may dispatch an authorized  
 1141 wrecker company out of rotation to the scene of a wrecked or  
 1142 disabled vehicle if the authorized wrecker company next on  
 1143 rotation is not equipped to provide the required wrecker  
 1144 services and the out-of-rotation authorized wrecker company is  
 1145 available with the required equipment. However, this subsection  
 1146 does not prohibit or prevent the owner or operator of a vehicle

HB 93

2007

involved in a crash or otherwise disabled from contacting any wrecker company that is properly equipped to provide the required wrecker services, regardless of whether the wrecker company is an authorized wrecker company, unless the law enforcement officer determines that the wrecked or disabled vehicle or vehicle cargo is a public safety hazard and the officer believes that the authorized wrecker company would arrive at the scene before the wrecker company requested by the owner or operator.

Section 17. Effective January 1, 2008, section 323.001, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 323.001, F.S., for present text.)

323.001 Wrecker company storage facilities; vehicle holds.--

(1) As used in this section, the term:

(a) "Business day" means a day other than a Saturday, Sunday, or federal or state legal holiday.

(b) "Wrecker company" has the same meaning ascribed in s. 508.101.

(2) A law enforcement agency may place a hold on a motor vehicle stored within a wrecker company's storage facility for 5 business days, thereby preventing a motor vehicle from being released to its owner.

(3) To extend a hold beyond 5 business days, the law enforcement agency must notify the wrecker company in writing before the expiration of the 5 business days. If notification is not made within the 5 business days, the wrecker company must

HB 93

2007

release the vehicle to the designated person under s. 713.78.

(a) If the hold is extended beyond the 5 business days, the law enforcement agency may have the vehicle removed to a designated impound lot and the vehicle may not be released by the law enforcement agency to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker company is presented to the law enforcement agency.

(b) If the law enforcement agency chooses to have the vehicle remain at the wrecker company's storage facility for more than 5 business days under the written notification, the law enforcement agency is responsible for paying the storage charges incurred by the wrecker company for the requested extended period. The owner or lienholder is responsible for paying the accrued towing and storage charges for the first 5 business days, or any period less than the first 5 business days, if the law enforcement agency moves the vehicle from the wrecker company's storage facility to a designated impound lot or provides written notification to extend the hold on the vehicle before the expiration of the 5 business days.

(c) The towing and storage rates for the owner or lienholder of the held vehicle may not exceed the rates for the law enforcement agency.

(4) If there is a judicial finding of no probable cause for having continued the immobilization or impoundment, the law enforcement agency ordering the hold must pay the accrued charges for any towing and storage.

(5) The requirements for a written hold apply when:

HB 93

2007

1203        (a) The law enforcement officer has probable cause to  
1204 believe that the vehicle should be seized and forfeited under  
1205 the Florida Contraband Forfeiture Act, ss. 932.701-932.707;

1206        (b) The law enforcement officer has probable cause to  
1207 believe that the vehicle should be seized and forfeited under  
1208 chapter 370 or chapter 372;

1209        (c) The law enforcement officer has probable cause to  
1210 believe that the vehicle was used as a means to commit a crime;

1211        (d) The law enforcement officer has probable cause to  
1212 believe that the vehicle is itself evidence that a crime has  
1213 been committed or that the vehicle contains evidence, which  
1214 cannot readily be removed, that a crime has been committed;

1215        (e) The law enforcement officer has probable cause to  
1216 believe that the vehicle was involved in a traffic accident  
1217 resulting in death or personal injury and should be sealed for  
1218 investigation and collection of evidence by a vehicular homicide  
1219 investigator;

1220        (f) The vehicle is impounded or immobilized under s.  
1221 316.193 or s. 322.34; or

1222        (g) The law enforcement officer is complying with a court  
1223 order.

1224        (6) The hold must be in writing and must specify:

1225        (a) The name and agency of the law enforcement officer  
1226 placing the hold on the vehicle.

1227        (b) The date and time the hold is placed on the vehicle.

1228        (c) A general description of the vehicle, including its  
1229 color, make, model, body style, and year; vehicle identification  
1230 number; registration license plate number, state, and year; and

HB 93

2007

1231 validation sticker number, state, and year.

1232        (d) The specific reason for placing the hold.

1233        (e) The condition of the vehicle.

1234        (f) The location where the vehicle is being held.

1235        (g) The name, address, and telephone number of the wrecker

1236 company and the storage facility.

1237        (7) A wrecker company's storage facility must comply with

1238 a hold placed by a law enforcement officer, including

1239 instructions for inside or outside storage. A wrecker company's

1240 storage facility may not release a motor vehicle subject to a

1241 hold to any person except as directed by the law enforcement

1242 agency placing the hold.

1243        (8) When a vehicle owner is found guilty of, regardless of

1244 adjudication, or pleads nolo contendere to, the offense that

1245 resulted in a hold being placed on his or her vehicle, the owner

1246 must pay the accrued towing and storage charges assessed against

1247 the vehicle.

1248        Section 18. Effective January 1, 2008, section 323.002,

1249 Florida Statutes, is amended to read:

1250        (Substantial rewording of section. See

1251 s. 323.002, F.S., for present text.)

1252        323.002 County and municipal wrecker allocation systems;

1253 penalties for operation outside of system.--

1254        (1) As used in this section, the term:

1255        (a) "Authorized wrecker company" means a wrecker company

1256 designated as part of the wrecker allocation system established

1257 by the governmental unit having jurisdiction over the scene of a

1258 wrecked, disabled, or abandoned vehicle.

HB 93

2007

(b) "Unauthorized wrecker company" means a wrecker company not designated as part of the wrecker allocation system established by the governmental unit having jurisdiction over the scene of a wrecked, disabled, or abandoned vehicle.

(c) "Wrecker allocation system" means a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker allocation system described in s. 321.051(2), under which a county or municipality contracts with one or more wrecker companies registered under chapter 508 for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. Each wrecker allocation system must use a method for apportioning the towing assignments among the eligible wrecker companies through the creation of geographic zones or a rotation schedule or a combination of geographic zones and a rotation schedule.

(d) "Wrecker company" has the same meaning ascribed in s. 508.101.

(e) "Wrecker operator" has the same meaning ascribed in s. 508.101.

(f) "Wrecker services" has the same meaning ascribed in s. 508.101.

(2) In a county or municipality that operates a wrecker allocation system:

(a) The wrecker allocation system may only use wrecker companies registered under chapter 508.

(b) An unauthorized wrecker company, its wrecker operators, or its other employees or agents may not monitor a

HB 93

2007

1287 police radio for communications between patrol field units and  
 1288 the dispatcher in order to determine the location of a wrecked  
 1289 or disabled vehicle for the purpose of dispatching its wrecker  
 1290 operator to drive by the scene of the vehicle in a manner  
 1291 described in paragraph (c) or paragraph (d). Any person who  
 1292 violates this paragraph commits a noncriminal violation,  
 1293 punishable as provided in s. 775.083.

1294       (c) Except as provided in paragraph (d), a wrecker  
 1295 operator dispatched by an unauthorized wrecker company who  
 1296 drives by the scene of a wrecked or disabled vehicle before the  
 1297 arrival of the wrecker operator dispatched by the authorized  
 1298 wrecker company may not initiate contact with the owner or  
 1299 operator of the vehicle by soliciting or offering wrecker  
 1300 services or tow the vehicle. Any person who violates this  
 1301 paragraph commits a misdemeanor of the second degree, punishable  
 1302 as provided in s. 775.082 or s. 775.083.

1303       (d) When a wrecker operator dispatched by an unauthorized  
 1304 wrecker company drives by the scene of a wrecked or disabled  
 1305 vehicle and the owner or operator initiates contact by signaling  
 1306 the wrecker operator to stop and provide wrecker services, the  
 1307 wrecker operator must disclose to the owner or operator of the  
 1308 vehicle that he or she was not dispatched by the authorized  
 1309 wrecker company designated as part of the wrecker allocation  
 1310 system and must disclose, in writing, what charges for towing  
 1311 and storage will apply before the vehicle is connected to the  
 1312 towing apparatus. Any person who violates this paragraph commits  
 1313 a misdemeanor of the second degree, punishable as provided in s.  
 1314 775.082 or s. 775.083.



HB 93

2007

(e) A wrecker operator may not falsely identify himself or herself as being part of, or as being employed by a wrecker company that is part of, the wrecker allocation system at the scene of a wrecked or disabled vehicle. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section does not prohibit or in any way prevent the owner or operator of a vehicle involved in a crash or otherwise disabled from contacting any wrecker company for the provision of wrecker services, regardless of whether the wrecker company is an authorized wrecker company. If a law enforcement officer determines that the disabled vehicle or vehicle cargo is a public safety hazard, the officer may, in the interest of public safety, dispatch an authorized wrecker company if the officer believes that the authorized wrecker company would arrive at the scene before the wrecker company requested by the owner or operator of the disabled vehicle or vehicle cargo.

(4) A law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment. However, this subsection does not prohibit or prevent the owner or operator of a vehicle involved in a crash or otherwise disabled from contacting any wrecker company that is properly equipped to provide the required wrecker services, regardless of whether the wrecker company is an authorized wrecker company, unless the law

HB 93

2007

enforcement officer determines that the wrecked or disabled vehicle or vehicle cargo is a public safety hazard and the officer believes that the authorized wrecker company would arrive at the scene before the wrecker company requested by the owner or operator.

Section 19. Effective January 1, 2008, section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.--

(1) As used in ~~For the purposes of~~ this section, the term:

(a) "Business day" means a day other than a Saturday, Sunday, or federal or state legal holiday.

(b) "Property owner" has the same meaning ascribed in s. 715.07.

(c) ~~(a)~~ "Vehicle" has the same meaning ascribed in s. 508.101 means any mobile item, whether motorized or not, which is mounted on wheels.

(d) ~~(b)~~ "Vessel" has the same meaning ascribed in s. 508.101 means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9).

(e) ~~(c)~~ "Wrecker" has the same meaning ascribed in s. 320.01 means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

HB 93

2007

1371           (f) "Wrecker company" has the same meaning ascribed in s.  
 1372           508.101.  
 1373           (g) "Wrecker operator" has the same meaning ascribed in s.  
 1374           508.101.  
 1375           (2) Whenever a wrecker company registered under chapter  
 1376           508 ~~person regularly engaged in the business of transporting~~  
 1377           ~~vehicles or vessels by wrecker, tow truck, or car carrier~~  
 1378           recovers, removes, or stores a vehicle or vessel upon  
 1379           instructions from:  
 1380               (a) The owner of the vehicle or vessel thereof;  
 1381               (b) The property owner or lessor, or a person authorized  
 1382           ~~by the owner or lessor,~~ of real property on which the ~~such~~  
 1383           vehicle or vessel is ~~wrongfully~~ parked without permission, and  
 1384           the removal is done in compliance with s. 715.07; or  
 1385               (c) Any law enforcement agency,  
 1386  
 1387           the wrecker company has ~~she or he shall have~~ a lien on the  
 1388           vehicle or vessel for a reasonable towing fee and for a  
 1389           reasonable storage fee, ~~+~~ except that no storage fee shall be  
 1390           charged if the vehicle or vessel is stored ~~for~~ less than 6  
 1391           hours.  
 1392           (3) This section does not authorize any person to claim a  
 1393           lien on a vehicle for fees or charges connected with the  
 1394           immobilization of the ~~such~~ vehicle using a vehicle boot or other  
 1395           similar device under ~~pursuant to~~ s. 715.07.  
 1396           (4) (a) Any wrecker company that ~~person regularly engaged~~  
 1397           ~~in the business of recovering, towing, or storing vehicles or~~  
 1398           ~~vessels who~~ comes into possession of a vehicle or vessel under

HB 93

2007

1399 ~~pursuant to~~ subsection (2), and ~~who~~ claims a lien for recovery,  
 1400 towing, or storage services, shall give notice to the registered  
 1401 owner, the insurance company insuring the vehicle  
 1402 notwithstanding ~~the provisions of~~ s. 627.736, and ~~to~~ all persons  
 1403 claiming a lien on the vehicle or vessel ~~thereon~~, as disclosed  
 1404 by the records in the Department of Highway Safety and Motor  
 1405 Vehicles or of a corresponding agency in any other state.

1406 (b) Whenever a ~~any~~ law enforcement agency authorizes the  
 1407 removal of a vehicle or vessel or whenever a wrecker company ~~any~~  
 1408 ~~towing service, garage, repair shop, or automotive service,~~  
 1409 ~~storage, or parking place~~ notifies the law enforcement agency of  
 1410 possession of a vehicle or vessel under ~~pursuant to~~ s.  
 1411 715.07(2)(a)2., the applicable law enforcement agency shall  
 1412 contact the Department of Highway Safety and Motor Vehicles, or  
 1413 the appropriate agency of the state of registration, if known,  
 1414 within 24 hours through the medium of electronic communications,  
 1415 giving the full description of the vehicle or vessel. Upon  
 1416 receipt of the full description of the vehicle or vessel, the  
 1417 department shall search its files to determine the owner's name,  
 1418 the insurance company insuring the vehicle or vessel, and  
 1419 whether any person has filed a lien upon the vehicle or vessel  
 1420 as provided in s. 319.27(2) and (3) and notify the applicable  
 1421 law enforcement agency within 72 hours. The wrecker company  
 1422 ~~person in charge of the towing service, garage, repair shop, or~~  
 1423 ~~automotive service, storage, or parking place~~ shall obtain that  
 1424 ~~such~~ information from the applicable law enforcement agency  
 1425 within 5 days after the date of storage and shall give notice  
 1426 under ~~pursuant to~~ paragraph (a). The department may release the

HB 93

2007

1427 insurance company information to the requestor notwithstanding  
1428 ~~the provisions of s. 627.736.~~

1429       (c) Notice by certified mail, ~~return receipt requested,~~  
1430 shall be sent within 7 business days after the date of storage  
1431 of the vehicle or vessel to the registered owner, the insurance  
1432 company insuring the vehicle notwithstanding ~~the provisions of~~  
1433 s. 627.736, and all persons of record claiming a lien against  
1434 the vehicle or vessel. The notice ~~it~~ shall state the fact of  
1435 possession of the vehicle or vessel and, that a lien as provided  
1436 in subsection (2) is claimed, that charges have accrued and the  
1437 amount of the charges ~~thereof~~, that the lien is subject to  
1438 enforcement under ~~pursuant to~~ law, and that the owner or  
1439 lienholder, if any, has the right to a hearing as set forth in  
1440 subsection (5), and that any vehicle or vessel that ~~which~~  
1441 remains unclaimed, or for which the charges for recovery,  
1442 towing, or storage services remain unpaid, may be sold free of  
1443 all prior liens after 35 days if the vehicle or vessel is more  
1444 than 3 years of age or after 50 days if the vehicle or vessel is  
1445 3 years of age or less.

1446       (d) If the wrecker company is unable ~~attempts to identify~~  
1447 ~~locate~~ the name and address of the owner or lienholder ~~prove~~  
1448 ~~unsuccessful~~, the wrecker company ~~towing-storage operator~~ shall,  
1449 after 7 business ~~working~~ days following, ~~excluding Saturday and~~  
1450 ~~Sunday~~, of the initial tow or storage, notify the public agency  
1451 of jurisdiction in writing by certified mail or acknowledged  
1452 hand delivery that the wrecker ~~towing-storage~~ company has been  
1453 unable to identify ~~locate~~ the name and address of the owner or  
1454 lienholder, and a physical search of the vehicle or vessel has

HB 93

2007

1455 disclosed no ownership information, and a good faith effort has  
 1456 been made. For purposes of this paragraph and subsection (9),  
 1457 the term "good faith effort" means that the following checks  
 1458 have been performed by the wrecker company to establish prior  
 1459 state of registration and for title:

1460       1. Check of vehicle or vessel for any type of tag, tag  
 1461 record, temporary tag, or regular tag.

1462       2. Check of law enforcement report for tag number or other  
 1463 information identifying the vehicle or vessel, if the vehicle or  
 1464 vessel was towed at the request of a law enforcement officer.

1465       3. Check of trip sheet or tow ticket of the wrecker ~~tow~~  
 1466 ~~truck~~ operator to see if a tag was on vehicle or vessel at  
 1467 beginning of tow, if private tow.

1468       4. If there is no address of the owner on the impound  
 1469 report, check of law enforcement report to see if an out-of-  
 1470 state address is indicated from driver license information.

1471       5. Check of vehicle or vessel for inspection sticker or  
 1472 other stickers and decals that may indicate a state of possible  
 1473 registration.

1474       6. Check of the interior of the vehicle or vessel for any  
 1475 papers that may be in the glove box, trunk, or other areas for a  
 1476 state of registration.

1477       7. Check of vehicle for vehicle identification number.

1478       8. Check of vessel for vessel registration number.

1479       9. Check of vessel hull for a hull identification number,  
 1480 which should be carved, burned, stamped, embossed, or otherwise  
 1481 permanently affixed to the outboard side of the transom or, if

HB 93

2007

there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

(5)(a) The owner of a vehicle or vessel removed under ~~pursuant to the provisions of~~ subsection (2), or any person claiming a lien, other than the wrecker company towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county in which the vehicle or vessel is stored or in which the owner resides to determine if her or his property was wrongfully taken or withheld from her or him.

(b) Upon filing of a complaint, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of the ~~such~~ charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel. At the time of the ~~such~~ release, after reasonable inspection, she or he shall give a receipt to the wrecker towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or to the contents of the vehicle or vessel thereof.

(c) Upon determining the respective rights of the parties, the court shall ~~may~~ award damages, reasonable attorney's fees, and costs to ~~in favor of~~ the prevailing party. ~~In any event,~~ The final order shall require ~~provide for~~ immediate payment in full

HB 93

2007

1510 of the recovery, towing, and storage fees by the vehicle or  
1511 vessel owner or lienholder, ~~+~~ by ~~or~~ the law enforcement agency  
1512 ordering the tow, ~~+~~ or by the property owner, ~~lessee, or agent~~  
1513 ~~thereof~~ of the real property from which the vehicle or vessel  
1514 was towed or removed under s. 715.07.

1515 (6) Any vehicle or vessel that ~~which~~ is stored under  
1516 ~~pursuant to~~ subsection (2) and ~~which~~ remains unclaimed, or for  
1517 which reasonable charges for recovery, towing, or storing remain  
1518 unpaid, and any contents not released under ~~pursuant to~~  
1519 subsection (10), ~~+~~ may be sold by the wrecker company ~~owner or~~  
1520 ~~operator of the storage space for the such~~ towing or storage  
1521 charge ~~after~~ 35 days after ~~from the time~~ the vehicle or vessel  
1522 is stored in the wrecker company's storage facility therein if  
1523 the vehicle or vessel is more than 3 years of age or ~~after~~ 50  
1524 days after ~~following the time~~ the vehicle or vessel is stored in  
1525 the wrecker company's storage facility therein if the vehicle or  
1526 vessel is 3 years of age or less. The sale shall be at public  
1527 auction for cash. If the date of the sale is ~~was~~ not included in  
1528 the notice required in subsection (4), notice of the sale shall  
1529 be given to the person in whose name the vehicle or vessel is  
1530 registered and to all persons claiming a lien on the vehicle or  
1531 vessel as shown on the records of the Department of Highway  
1532 Safety and Motor Vehicles or of the corresponding agency in any  
1533 other state. Notice shall be sent by certified mail, ~~return~~  
1534 ~~receipt requested,~~ to the owner of the vehicle or vessel and the  
1535 person having the recorded lien on the vehicle or vessel at the  
1536 address shown on the records of the registering agency and shall  
1537 be mailed at least ~~not less than~~ 15 days before the date of the



HB 93

2007

1538 sale. After diligent search and inquiry, if the name and address  
1539 of the registered owner or the owner of the recorded lien cannot  
1540 be ascertained, the requirements of notice by mail may be  
1541 dispensed with. In addition to the notice by mail, public notice  
1542 of the time and place of sale shall be made by publishing a  
1543 notice of the sale ~~thereof~~ one time, at least 10 days prior to  
1544 the date of the sale, in a newspaper of general circulation in  
1545 the county in which the sale is to be held. The proceeds of the  
1546 sale, after payment of reasonable towing and storage charges,  
1547 and costs of the sale, in that order of priority, shall be  
1548 deposited with the clerk of the circuit court for the county if  
1549 the owner is absent, and the clerk shall hold the ~~such~~ proceeds  
1550 subject to the claim of the person legally entitled to those  
1551 proceeds ~~thereto~~. The clerk shall be entitled to receive 5  
1552 percent of the ~~such~~ proceeds for the care and disbursement of  
1553 the proceeds ~~thereof~~. The certificate of title issued under this  
1554 section ~~law~~ shall be discharged of all liens unless otherwise  
1555 provided by court order.

1556 (7) (a) A wrecker company, its wrecker operators, and other  
1557 employees or agents of the wrecker company ~~operator~~ recovering,  
1558 towing, or storing vehicles or vessels are ~~is~~ not liable for  
1559 damages connected with those ~~such~~ services, theft of the ~~such~~  
1560 vehicles or vessels, or theft of personal property contained in  
1561 the ~~such~~ vehicles or vessels if those, ~~provided that such~~  
1562 services are ~~have been~~ performed with reasonable care and  
1563 ~~provided, further, that,~~ in the case of removal of a vehicle or  
1564 vessel upon the request of a person purporting, and reasonably  
1565 appearing, to be the property owner ~~or lessee, or a person~~

HB 93

2007

~~authorized by the owner or lessee,~~ of the real property from which ~~the such~~ vehicle or vessel is removed, ~~the such~~ removal is ~~has been~~ done in compliance with s. 715.07. Further, a wrecker company, its wrecker operators, and other employees or agents of the wrecker company are ~~operator is~~ not liable for damage to a vehicle, a vessel, or cargo that obstructs the normal movement of traffic or creates a hazard to traffic and is removed in compliance with the request of a law enforcement officer.

(b) For the purposes of this subsection, a wrecker company, its wrecker operators, and other employees or agents of the wrecker company are ~~operator is~~ presumed to use reasonable care to prevent the theft of a vehicle or vessel or of any personal property contained in the such vehicle or vessel stored in the wrecker company's ~~operator's~~ storage facility if all of the following apply:

1. The wrecker company ~~operator~~ surrounds the storage facility with a chain-link or solid-wall type fence at least 6 feet in height;

2. The wrecker company ~~illuminates~~ ~~operator has~~ ~~illuminated~~ the storage facility with lighting of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet during nighttime; and

3. The wrecker company ~~operator~~ uses one or more of the following security methods to discourage theft of vehicles or vessels or of any personal property contained in such vehicles or vessels stored in the wrecker company's ~~operator's~~ storage facility:

HB 93

2007

1593           a. A night dispatcher or watchman remains on duty at the  
1594 storage facility from sunset to sunrise;  
1595           b. A security dog remains at the storage facility from  
1596 sunset to sunrise;  
1597           c. Security cameras or other similar surveillance devices  
1598 monitor the storage facility; or  
1599           d. A security guard service examines the storage facility  
1600 at least once each hour from sunset to sunrise.  
1601           (c) Any law enforcement agency requesting that a motor  
1602 vehicle be removed from an accident scene, street, or highway  
1603 must conduct an inventory and prepare a written record of all  
1604 personal property found in the vehicle before the vehicle is  
1605 removed by a wrecker operator. However, if the owner or driver  
1606 of the motor vehicle is present and accompanies the vehicle, an  
1607 ~~ne~~ inventory by law enforcement is not required. A wrecker  
1608 company, its wrecker operators, and other employees or agents of  
1609 the wrecker company are operator ~~is~~ not liable for the loss of  
1610 personal property alleged to be contained in ~~such~~ a vehicle when  
1611 the ~~such~~ personal property was not identified on the inventory  
1612 record prepared by the law enforcement agency requesting the  
1613 removal of the vehicle.  
1614           (8) A wrecker company and its wrecker operators, excluding  
1615 ~~person regularly engaged in the business of recovering, towing,~~  
1616 ~~or storing vehicles or vessels, except~~ a person licensed under  
1617 chapter 493 while engaged in "repossession" activities as  
1618 defined in s. 493.6101, may not operate a wrecker, ~~tow truck, or~~  
1619 ~~ear carrier~~ unless the name, address, and telephone number of  
1620 the wrecker company performing the wrecker services ~~service~~ is

HB 93

2007

clearly printed in contrasting colors on the driver and passenger sides of the wrecker ~~its vehicle~~. The name must be in at least 3-inch permanently affixed letters, and the address and telephone number must be in at least 1-inch permanently affixed letters.

(9) Failure to make good faith, best efforts to comply with the notice requirements of this section precludes ~~shall preclude~~ the imposition of any storage charges against the ~~such~~ vehicle or vessel.

(10) Each wrecker company that provides ~~Persons who provide services under pursuant to~~ this section shall permit vehicle or vessel owners or their agents, which agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the towed vehicle or vessel and shall release to the owner or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel that ~~which~~ was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the wrecker company ~~person~~ providing those ~~such~~ services.

(11)(a) A wrecker company that ~~Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who~~ comes into possession of a vehicle or vessel pursuant to subsection (2) and complies ~~who has complied with the provisions of~~ subsections (3) and (6), when the ~~such~~ vehicle or vessel is to be sold for purposes of being dismantled, destroyed, or changed in such a manner that it is not the motor vehicle or vessel described in the certificate of

HB 93

2007

title, must ~~shall~~ apply to the county tax collector for a certificate of destruction. A certificate of destruction, which authorizes the dismantling or destruction of the vehicle or vessel described on the certificate ~~therein~~, is ~~shall be~~ reassignable no more than twice ~~a maximum of two times~~ before dismantling or destruction of the vehicle or vessel is ~~shall be~~ required, and, in lieu of a certificate of title, the certificate of destruction shall accompany the vehicle or vessel for which it is issued, when the ~~such~~ vehicle or vessel is sold for that purpose ~~such purposes~~, ~~in lieu of a certificate of title~~. The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements of this section and, if the vehicle or vessel is not registered in this state, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen, and must also ~~shall~~ be accompanied by any other ~~such~~ documentation ~~as may be~~ required by the department.

(b) The Department of Highway Safety and Motor Vehicles shall charge a fee of \$3 for each certificate of destruction. A service charge of \$4.25 shall be collected and retained by the tax collector who processes the application.

(c) The Department of Highway Safety and Motor Vehicles may adopt ~~such~~ rules to administer ~~as it deems necessary or proper for the administration of~~ this subsection.

(12) (a) Any person who violates ~~any provision of~~ subsection (1), subsection (2), subsection (4), subsection (5), subsection (6), or subsection (7) commits ~~is guilty of~~ a

HB 93

2007

1677 | misdemeanor of the first degree, punishable as provided in s.  
1678 | 775.082 or s. 775.083.

1679 |       (b) Any person who violates subsection (8), subsection  
1680 | (9), subsection (10), or subsection (11) commits ~~the provisions~~  
1681 | ~~of subsections (8) through (11) is guilty~~ of a felony of the  
1682 | third degree, punishable as provided in s. 775.082, s. 775.083,  
1683 | or s. 775.084.

1684 |       (c) Any person who uses a false or fictitious name, gives  
1685 | a false or fictitious address, or makes any false statement in  
1686 | any application or affidavit required under ~~the provisions of~~  
1687 | this section commits ~~is guilty of~~ a felony of the third degree,  
1688 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1689 |       (d) Employees of the Department of Highway Safety and  
1690 | Motor Vehicles and law enforcement officers may ~~are authorized~~  
1691 | ~~to inspect the records of each wrecker company in this state any~~  
1692 | ~~person regularly engaged in the business of recovering, towing,~~  
1693 | ~~or storing vehicles or vessels or transporting vehicles or~~  
1694 | ~~vessels by wrecker, tow truck, or car carrier,~~ to ensure  
1695 | compliance with the requirements of this section. Any person who  
1696 | fails to maintain records, or fails to produce records when  
1697 | required in a reasonable manner and at a reasonable time,  
1698 | commits a misdemeanor of the first degree, punishable as  
1699 | provided in s. 775.082 or s. 775.083.

1700 |       (13)(a) Upon receipt by the Department of Highway Safety  
1701 | and Motor Vehicles of written notice from a wrecker company that  
1702 | ~~operator who~~ claims a wrecker company's ~~operator's~~ lien under  
1703 | paragraph (2)(c) ~~or paragraph (2)(d)~~ for recovery, towing, or  
1704 | storage of an abandoned vehicle or vessel upon instructions from

HB 93

2007

1705 any law enforcement agency, for which a certificate of  
 1706 destruction has been issued under subsection (11), the  
 1707 department shall place the name of the registered owner of that  
 1708 vehicle or vessel on the list of those persons who may not be  
 1709 issued a license plate or revalidation sticker for any motor  
 1710 vehicle under s. 320.03(8). If the vehicle or vessel is owned  
 1711 jointly by more than one person, the name of each registered  
 1712 owner shall be placed on the list. The notice of wrecker  
 1713 company's ~~operator's~~ lien shall be submitted on forms provided  
 1714 by the department, which must include:

1715       1. The name, address, and telephone number of the wrecker  
 1716 company ~~operator~~.

1717       2. The name of the registered owner of the vehicle or  
 1718 vessel and the address to which the wrecker company ~~operator~~  
 1719 provided notice of the lien to the registered owner under  
 1720 subsection (4).

1721       3. A general description of the vehicle or vessel,  
 1722 including its color, make, model, body style, and year.

1723       4. The vehicle identification number (VIN); registration  
 1724 license plate number, state, and year; validation decal number,  
 1725 state, and year; vessel registration number; hull identification  
 1726 number; or other identification number, as applicable.

1727       5. The name of the person or the corresponding law  
 1728 enforcement agency that requested that the vehicle or vessel be  
 1729 recovered, towed, or stored.

1730       6. The amount of the wrecker company's ~~operator's~~ lien,  
 1731 not to exceed the amount allowed by paragraph (b).

HB 93

2007

(b) For purposes of this subsection only, the amount of the wrecker company's ~~operator's~~ lien for which the department will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle or vessel for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality under ss. 125.0103(1)(c) and 166.043(1)(c). This paragraph does not limit the amount of a wrecker company's ~~operator's~~ lien claimed under subsection (2) or prevent a wrecker company ~~operator~~ from seeking civil remedies for enforcement of the entire amount of the lien, but limits only that portion of the lien for which the department will prevent issuance of a license plate or revalidation sticker.

(c)1. The registered owner of a vehicle or vessel may dispute a wrecker company's ~~operator's~~ lien, by notifying the department of the dispute in writing on forms provided by the department, if at least one of the following applies:

a. The registered owner presents a notarized bill of sale proving that the vehicle or vessel was sold in a private or casual sale before the vehicle or vessel was recovered, towed, or stored.

b. The registered owner presents proof that the Florida certificate of title of the vehicle or vessel was sold to a licensed dealer as defined in s. 319.001 before the vehicle or vessel was recovered, towed, or stored.

c. The records of the department were marked "sold" prior to the date of the tow.



HB 93

2007

1760  
 1761 If the registered owner's dispute of a wrecker company's  
 1762 ~~operator's~~ lien complies with one of these criteria, the  
 1763 department shall immediately remove the registered owner's name  
 1764 from the list of those persons who may not be issued a license  
 1765 plate or revalidation sticker for any motor vehicle under s.  
 1766 320.03(8), thereby allowing issuance of a license plate or  
 1767 revalidation sticker. If the vehicle or vessel is owned jointly  
 1768 by more than one person, each registered owner must dispute the  
 1769 wrecker company's ~~operator's~~ lien in order to be removed from  
 1770 the list. However, the department shall deny any dispute and  
 1771 maintain the registered owner's name on the list of those  
 1772 persons who may not be issued a license plate or revalidation  
 1773 sticker for any motor vehicle under s. 320.03(8) if the wrecker  
 1774 company ~~operator~~ has provided the department with a certified  
 1775 copy of the judgment of a court that ~~which~~ orders the registered  
 1776 owner to pay the wrecker company's ~~operator's~~ lien claimed under  
 1777 this section. In such a case, the amount of the wrecker  
 1778 company's ~~operator's~~ lien allowed by paragraph (b) may be  
 1779 increased to include no more than \$500 of the reasonable costs  
 1780 and attorney's fees incurred in obtaining the judgment. The  
 1781 department's action under this subparagraph is ministerial in  
 1782 nature, shall not be considered final agency action, and is  
 1783 appealable only to the county court for the county in which the  
 1784 vehicle or vessel was ordered removed.

1785        2. A person against whom a wrecker company's ~~operator's~~  
 1786 lien has been imposed may alternatively obtain a discharge of  
 1787 the lien by filing a complaint, challenging the validity ~~of the~~

HB 93

2007

1788 ~~lien~~ or the amount of the lien ~~thereof~~, in the county court of  
1789 the county in which the vehicle or vessel was ordered removed.  
1790 Upon filing of the complaint, the person may have her or his  
1791 name removed from the list of those persons who may not be  
1792 issued a license plate or revalidation sticker for any motor  
1793 vehicle under s. 320.03(8), thereby allowing issuance of a  
1794 license plate or revalidation sticker, upon posting with the  
1795 court a cash or surety bond or other adequate security equal to  
1796 the amount of the wrecker company's ~~operator's~~ lien to ensure  
1797 the payment of such lien in the event she or he does not  
1798 prevail. Upon the posting of the bond and the payment of the  
1799 applicable fee set forth in s. 28.24, the clerk of the court  
1800 shall issue a certificate notifying the department of the  
1801 posting of the bond and directing the department to release the  
1802 wrecker company's ~~operator's~~ lien. Upon determining the  
1803 respective rights of the parties, the court may award damages  
1804 and costs in favor of the prevailing party.

1805 3. If a person against whom a wrecker company's ~~operator's~~  
1806 lien has been imposed does not object to the lien, but cannot  
1807 discharge the lien by payment because the wrecker company  
1808 ~~operator~~ has moved or gone out of business, the person may have  
1809 her or his name removed from the list of those persons who may  
1810 not be issued a license plate or revalidation sticker for any  
1811 motor vehicle under s. 320.03(8), thereby allowing issuance of a  
1812 license plate or revalidation sticker, upon posting with the  
1813 clerk of court in the county in which the vehicle or vessel was  
1814 ordered removed, a cash or surety bond or other adequate  
1815 security equal to the amount of the wrecker company's ~~operator's~~

HB 93

2007

lien. Upon the posting of the bond and the payment of the application fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the department of the posting of the bond and directing the department to release the wrecker company's ~~operator's~~ lien. The department shall mail to the wrecker company ~~operator~~, at the address upon the lien form, notice that the wrecker company ~~operator~~ must claim the security within 60 days, or the security will be released back to the person who posted it. At the conclusion of the 60 days, the department shall direct the clerk as to which party is entitled to payment of the security, less applicable clerk's fees.

4. A wrecker company's ~~operator's~~ lien expires 5 years after filing.

(d) Upon discharge of the amount of the wrecker company's ~~operator's~~ lien allowed by paragraph (b), the wrecker company ~~operator~~ must issue a certificate of discharged wrecker company's ~~operator's~~ lien on forms provided by the department to each registered owner of the vehicle or vessel attesting that the amount of the wrecker company's ~~operator's~~ lien allowed by paragraph (b) has been discharged. Upon presentation of the certificate of discharged wrecker company's ~~operator's~~ lien by the registered owner, the department shall immediately remove the registered owner's name from the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8), thereby allowing issuance of a license plate or revalidation sticker. Issuance of a certificate of discharged wrecker company's ~~operator's~~ lien under this paragraph does not discharge the entire amount of the

HB 93

2007

1844 wrecker company's ~~operator's~~ lien claimed under subsection (2),  
 1845 but only certifies to the department that the amount of the  
 1846 wrecker company's ~~operator's~~ lien allowed by paragraph (b), for  
 1847 which the department will prevent issuance of a license plate or  
 1848 revalidation sticker, has been discharged.

1849 (e) When a wrecker company ~~operator~~ files a notice of  
 1850 wrecker company's ~~operator's~~ lien under this subsection, the  
 1851 department shall charge the wrecker company ~~operator~~ a fee of  
 1852 \$2, which shall be deposited into the General Revenue Fund  
 1853 established under s. 860.158. A service charge of \$2.50 shall be  
 1854 collected and retained by the tax collector who processes a  
 1855 notice of wrecker company's ~~operator's~~ lien.

1856 (f) This subsection applies only to the annual renewal in  
 1857 the registered owner's birth month of a motor vehicle  
 1858 registration and does not apply to the transfer of a  
 1859 registration of a motor vehicle sold by a motor vehicle dealer  
 1860 licensed under chapter 320, except for the transfer of  
 1861 registrations which is inclusive of the annual renewals. This  
 1862 subsection does not apply to any vehicle registered in the name  
 1863 of the lessor. This subsection does not affect the issuance of  
 1864 the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

1865 (g) The Department of Highway Safety and Motor Vehicles  
 1866 may adopt rules pursuant to ss. 120.536(1) and 120.54 to  
 1867 implement this subsection.

1868 Section 20. The amendments to section 713.78, Florida  
 1869 Statutes, made by this act do not affect the validity of liens  
 1870 established under section 713.78, Florida Statutes, before  
 1871 January 1, 2008.

HB 93

2007

Section 21. Effective January 1, 2008, section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels parked on real ~~private~~ property without permission; towing.--

(1) As used in this section, the term:

(a) "Property owner" means an owner or lessee of real property, or a person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium.

~~(b)(a) "Vehicle" has the same meaning ascribed in s. 508.101 means any mobile item which normally uses wheels, whether motorized or not.~~

~~(c)(b) "Vessel" has the same meaning ascribed in s. 508.101 means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9).~~

(d) "Wrecker company" has the same meaning ascribed in s. 508.101.

(e) "Wrecker operator" has the same meaning ascribed in s. 508.101.

(2) A property owner ~~The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium,~~ may cause a ~~any~~ vehicle or vessel parked on her or his ~~such~~ property without her or his permission to be removed by a wrecker company ~~person regularly engaged in the~~ registered under chapter 508

HB 93

2007

1900 ~~business of towing vehicles or vessels,~~ without liability for  
1901 the costs of removal, transportation, or storage or damages  
1902 caused by the ~~such~~ removal, transportation, or storage, under  
1903 any of the following circumstances:

1904       (a) The towing or removal of any vehicle or vessel from  
1905 real ~~private~~ property without the consent of the registered  
1906 owner or other legally authorized person in control of that  
1907 vehicle or vessel is subject to strict compliance with the  
1908 following conditions and restrictions:

1909       1.a. Any towed or removed vehicle or vessel must be stored  
1910 at a storage facility ~~site~~ within a 10-mile radius of the point  
1911 of removal in any county with a population of 500,000 ~~population~~  
1912 or more, and within a 15-mile radius of the point of removal in  
1913 any county with a population of fewer ~~less~~ than 500,000  
1914 ~~population~~. The wrecker company's storage facility ~~That site~~  
1915 must be open for the purpose of redemption of vehicles and  
1916 vessels on any day that the wrecker company ~~person or firm~~  
1917 towing the ~~such~~ vehicle or vessel is open for towing purposes,  
1918 from 8 ~~8:00~~ a.m. to 6 ~~6:00~~ p.m., and, when closed, must ~~shall~~  
1919 have prominently posted a sign indicating a telephone number  
1920 where the operator of the storage facility ~~site~~ can be reached  
1921 at all times. Upon receipt of a telephoned request to open the  
1922 storage facility ~~site~~ to redeem a vehicle or vessel, the  
1923 operator shall return to the storage facility ~~site~~ within 1 hour  
1924 or she or he is ~~will be~~ in violation of this section.

1925       b. If no wrecker company ~~towing business providing such~~  
1926 ~~service~~ is located within the area of towing limitations ~~set~~  
1927 ~~forth~~ in sub-subparagraph a., the following limitations apply:

HB 93

2007

any towed or removed vehicle or vessel must be stored at a storage facility ~~site~~ within a 20-mile radius of the point of removal in any county with a population of 500,000 ~~population~~ or more, and within a 30-mile radius of the point of removal in any county with a population of fewer less than 500,000 ~~population~~.

2. The wrecker company ~~person or firm~~ towing or removing the vehicle or vessel shall, within 30 minutes after completion of ~~the such~~ towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff, of ~~the such~~ towing or removal, the location of the storage facility site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or the make, model, color, and registration number of the vessel. The wrecker company ~~or description and registration number of the vessel and~~ shall also obtain the name of the person at the police that department or sheriff's office to whom such information is ~~was~~ reported and note that name on the trip record.

3. A wrecker operator ~~person~~ in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is ~~not lawfully~~ parked without permission must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in subparagraph 6. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is

HB 93

2007

unable to pay the service fee or refuses to remove the vehicle  
or vessel that is parked without permission. If the vehicle or  
vessel is redeemed, a detailed signed receipt must be given to  
the person redeeming the vehicle or vessel.

4. A wrecker company, a wrecker operator, or another  
employee or agent of a wrecker company ~~person~~ may not pay or  
accept money or other valuable consideration for the privilege  
of towing or removing vehicles or vessels from a particular  
location.

5. Except for property appurtenant to and obviously a part  
of a single-family residence, and except for instances when  
notice is personally given to the owner or other legally  
authorized person in control of the vehicle or vessel that the  
area in which that vehicle or vessel is parked is reserved or  
otherwise unavailable for unauthorized vehicles or vessels and  
that the vehicle or vessel is subject to being removed at the  
owner's or operator's expense, any property owner ~~or lessee, or~~  
~~person authorized by the property owner or lessee, before prior~~  
~~to~~ towing or removing any vehicle or vessel from real private  
property without the consent of the owner or other legally  
authorized person in control of that vehicle or vessel, must  
post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway  
access or curb cut allowing vehicular access to the property,  
within 5 feet from the public right-of-way line. If there are no  
curbs or access barriers, at least one sign ~~the signs~~ must be  
posted ~~not less than one sign~~ for each 25 feet of lot frontage.



HB 93

2007

1983           b. The notice must clearly indicate, in at least ~~not less~~  
1984 ~~than~~ 2-inch high, light-reflective letters on a contrasting  
1985 background, that unauthorized vehicles will be towed away at the  
1986 owner's expense. The words "tow-away zone" must be included on  
1987 the sign in at least ~~not less than~~ 4-inch high letters.

1988           c. The notice must also provide the name and current  
1989 telephone number of the wrecker company ~~person or firm~~ towing or  
1990 removing the vehicles or vessels.

1991           d. The sign structure containing the required notices must  
1992 be permanently installed with the words "tow-away zone" not less  
1993 than 3 feet and not more than 6 feet above ground level and must  
1994 be continuously maintained on the property for not less than 24  
1995 hours prior to the towing or removal of any vehicles or vessels.

1996           e. The local government may require permitting and  
1997 inspection of these signs prior to any towing or removal of  
1998 vehicles or vessels being authorized.

1999           f. A business with 20 or fewer parking spaces satisfies  
2000 the notice requirements of this subparagraph by prominently  
2001 displaying a sign stating, "Reserved Parking for Customers Only.  
2002 Unauthorized Vehicles or Vessels Will be Towed Away At the  
2003 Owner's Expense," in at least ~~not less than~~ 4-inch high, light-  
2004 reflective letters on a contrasting background.

2005           ~~g. A property owner towing or removing vessels from real~~  
2006 ~~property must post notice, consistent with the requirements in~~  
2007 ~~sub subparagraphs a. f., which apply to vehicles, that~~  
2008 ~~unauthorized vehicles or vessels will be towed away at the~~  
2009 ~~owner's expense.~~

2010

HB 93

2007

2011 A business owner or lessee may authorize the removal of a  
 2012 vehicle or vessel by a wrecker towing company registered under  
 2013 chapter 508 when no tow-away sign is posted if the vehicle or  
 2014 vessel is parked in ~~such~~ a manner that restricts the normal  
 2015 operation of business. ~~and~~ If a vehicle or vessel parked on a  
 2016 public right-of-way obstructs access to a private driveway when  
 2017 no tow-away sign is posted, the owner ~~or~~ lessee of the  
 2018 driveway, or the owner's or lessee's agent may have the vehicle  
 2019 or vessel removed by a wrecker towing company registered under  
 2020 chapter 508 upon signing an order that the vehicle or vessel be  
 2021 removed ~~without a posted tow away zone sign.~~

2022 6. Each wrecker company ~~Any person or firm~~ that tows or  
 2023 removes vehicles or vessels and proposes to require an owner,  
 2024 operator, or person in control of a vehicle or vessel to pay the  
 2025 costs of towing and storage prior to redemption of the vehicle  
 2026 or vessel must file and keep on record with the local law  
 2027 enforcement agency a complete copy of the current rates to be  
 2028 charged for the ~~such~~ services and post at the wrecker company's  
 2029 storage facility ~~site~~ an identical rate schedule and any written  
 2030 contracts with property owners, ~~lessees~~, or persons in control  
 2031 of real property that ~~which~~ authorize the wrecker company ~~such~~  
 2032 ~~person or firm~~ to remove vehicles or vessels as provided in this  
 2033 section.

2034 7. Each wrecker company ~~Any person or firm~~ towing or  
 2035 removing any vehicles or vessels from real ~~private~~ property  
 2036 without the consent of the owner or other legally authorized  
 2037 person in control of the vehicles or vessels shall, on each  
 2038 wrecker ~~any trucks, wreckers~~ as defined in s. 320.01 ~~s.~~

HB 93

2007

~~713.78(1)(c), or other vehicles~~ used in the towing or removal, have the name, address, and telephone number of the wrecker company ~~performing such service~~ clearly printed in contrasting colors on the driver and passenger sides of the wrecker vehicle. The name must ~~shall~~ be in at least 3-inch permanently affixed letters, and the address and telephone number must ~~shall~~ be in at least 1-inch permanently affixed letters.

8. Vehicle or vessel entry for the purpose of towing or removing the vehicle or vessel is ~~shall be~~ allowed with reasonable care on the part of the wrecker company and the wrecker operators ~~person or firm~~ towing the vehicle or vessel. A wrecker company, its wrecker operators, and other employees or agents of the wrecker company are not ~~Such person or firm shall~~ be liable for any damage occasioned to the vehicle or vessel if ~~such~~ entry into the vehicle or vessel is performed ~~not in~~ accordance with ~~the standard of~~ reasonable care.

9. When a vehicle or vessel is ~~has been~~ towed or removed under ~~pursuant to~~ this section, the wrecker company ~~it~~ must release the vehicle or vessel ~~be released~~ to its owner or an agent of the owner ~~custodian~~ within one hour after requested. Any vehicle or vessel owner or the owner's agent has ~~shall have~~ the right to inspect the vehicle or vessel before accepting its return. A wrecker company may not require any vehicle or vessel owner, custodian, or agent to, and no release the wrecker company or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or other legally authorized person at the time of the redemption ~~may be required from any vehicle or~~

HB 93

2007

~~vessel owner, custodian, or agent~~ as a condition of release of the vehicle or vessel to its owner. A wrecker company must give a person paying towing and storage charges under this section a detailed, signed receipt showing the legal name of the wrecker company ~~or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges~~ at the time of payment, whether requested or not.

(b) ~~The~~ These requirements of this subsection are minimum standards and do not preclude enactment of additional regulations by any municipality or county, including the regulation of ~~right to regulate~~ rates when vehicles or vessels are towed from real ~~private~~ property.

(3) This section does not apply to vehicles or vessels that are reasonably identifiable from markings as law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles or vessels ~~that are marked as such~~ or to property owned by any governmental entity.

(4) When a person improperly causes a vehicle or vessel to be removed, that ~~such~~ person is ~~shall be~~ liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's fees; and court costs.

(5) Failure to make good faith efforts to comply with the notice requirements in subparagraph (2)(a)5. precludes the imposition of any towing or storage charges against the vehicle or vessel.

HB 93

2007

2094        ~~(6)~~(5)(a) Any person who violates subparagraph (2)(a)2. or  
2095        subparagraph (2)(a)6. commits a misdemeanor of the first degree,  
2096        punishable as provided in s. 775.082 or s. 775.083.

2097        (b) Any person who violates subparagraph (2)(a)1.,  
2098        subparagraph (2)(a)3., subparagraph (2)(a)4., subparagraph  
2099        (2)(a)7., or subparagraph (2)(a)9. commits a felony of the third  
2100        degree, punishable as provided in s. 775.082, s. 775.083, or s.  
2101        775.084.

2102        Section 22. Effective January 1, 2008, subsection (15) of  
2103        section 1.01, Florida Statutes, is repealed.

2104        Section 23. The sum of \$693,000 is appropriated from the  
2105        General Inspection Trust Fund to the Department of Agriculture  
2106        and Consumer Services, and nine additional full-time-equivalent  
2107        positions are authorized, for the purpose of implementing this  
2108        act during the 2007-2008 fiscal year.

2109        Section 24. Except as otherwise expressly provided in this  
2110        act, this act shall take effect July 1, 2007.


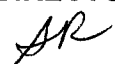


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 245  
**SPONSOR(S):** Troutman  
**TIED BILLS:**

Exemptions from the Tax on Sales, Use, and Other Transactions

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Agribusiness		Kaiser 	Reese 
2) Environment & Natural Resources Council			
3)			
4)			
5)			

### SUMMARY ANALYSIS

This bill provides a sales tax exemption for purchases of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production. The bill also provides definitions for low-volume irrigation, microirrigation, and their related components.

The bill deletes sales tax exemptions for generators used on poultry farms and for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised. These exemptions are addressed elsewhere in the statutes.

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative fiscal impact of \$3.4 million to state and local governments in FY 2007-2008 and \$3.6 million to state and local governments in FY 2008-2009.

The effective date of this legislation is July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure lower taxes:** This legislation provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

#### B. EFFECT OF PROPOSED CHANGES:

The bill provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

The bill also provides definitions for low-volume irrigation and microirrigation; these were not previously defined in statute. These irrigation systems are designed to deliver water at a rate of 45 gallons per hour or less per exit point. System components include pumps, pumping stations, control stations, filtration equipment pressure regulators, piping, tubing, emitters, valves, fittings, gauges, sensors, sprinklers, and safety devices.

The bill deletes the exemption in s. 212.08(5)(a), F.S., for generators used on poultry farms. This exemption still remains under the provisions of s. 212.08(3), F.S.

The bill also deletes the exemption in s. 212.08(5)(a), F.S., for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised. This exemption still remains under the provisions of s. 212.08(5)(e), F.S.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 212.02, F.S.; creating a definition for low-volume irrigation and microirrigation.

**Section 2:** Amends s. 212.08, F.S.; providing an exemption for low-volume irrigation or microirrigation; and, removing exemptions for generators used in poultry farms and liquefied petroleum gas or other fuels used to heat structures in which started pullets or boilers are raised.

**Section 3:** Provides an effective date of July 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	<u>2007-08</u>	<u>2008-09</u>
General Revenue	(2.7m)	(2.9m)
State Trust	<u>(Insignificant)</u>	<u>(Insignificant)</u>
Total	(2.7m)	(2.9m)

##### 2. Expenditures:

None



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	<u>2007-08</u>	<u>2008-09</u>
Revenue Sharing	(0.1m)	(0.1m)
Local Gov't. Half Cent	(0.3m)	(0.3m)
Local Option	<u>(0.3m)</u>	<u>(0.3m)</u>
Total Local Impact	(0.7m)	(0.7m)

**2. Expenditures:**

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Persons purchasing low-volume irrigation, or microirrigation equipment, or their components for use in agricultural production will no longer be required to pay the applicable sales tax on these products.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of the House.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**D. STATEMENT OF THE SPONSOR**

This is a good bill that will assist all Florida growers and promote increased use of low volume/precision irrigation.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

N/A

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **HB 245**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Agribusiness

Representative Poppell offered the following:

**Amendment (with directory and title amendments)**

Between lines 71-72, insert:

(q) Building materials for construction of farm  
structures.--

1. There shall be no tax on purchases of building  
materials, including, but not limited to, wood, metal, aluminum,  
tin, plastics, glass, polyethylene, shade cloth, woven ground  
cloth, nails, nuts, bolts, fasteners, cable, wires, and other  
similar appurtenances used for the construction of new farm  
structures or the replacement, repair, or rebuilding of existing  
structures located on a farm that is not a residential dwelling  
and is located on land that is an integral part of a farm  
operation or is classified as agricultural land pursuant to s.  
193.461. Such structures include, but are not limited to,  
greenhouses, shade houses, poly-houses, facilities required to  
meet state or federal eradication or other successor programs,  
pole barns, fences, irrigation pump houses, and storage  
facilities. Such exemption shall not be allowed unless the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

purchaser or lessee signs a certificate stating that the item to  
be exempted is for the use designated in this paragraph. The  
term "farm" is defined as provided in s. 823.14.

2. Agricultural producers may apply for a tax credit equal  
to the documented amount of sales tax paid for the purchase of  
material included in this paragraph if the material was  
purchased within 12 months prior to the effective date of this  
paragraph or provides the department appropriate receipts which  
demonstrate the material was purchased for the direct purpose of  
rebuilding, replacing, or repairing structures damaged from any  
named storm which impacted this state during the 2004 or 2005  
calendar years.

===== D I R E C T O R Y A M E N D M E N T =====

Remove line 35 and insert:

Section 2. Section

===== T I T L E A M E N D M E N T =====

Between lines 9-10, insert:

exempting purchases of certain building materials used in  
constructing certain farm structures; providing requirements;  
providing for credit of taxes paid by agricultural producers;  
providing procedures and requirements;

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HB 245

2007

A bill to be entitled

An act relating to exemptions from the tax on sales, use, and other transactions; amending s. 212.02, F.S.; defining the term "low-volume irrigation" or "microirrigation"; amending s. 212.08, F.S.; including in the exemption for items in agricultural use certain agricultural machinery or farm equipment used for low-volume irrigation or microirrigation; deleting certain exemptions relating to certain equipment and fuel used in breeding poultry; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (34) is added to section 212.02, Florida Statutes, to read:

212.02 Definitions.--The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(34) "Low-volume irrigation" or "microirrigation" means irrigation by means of frequent application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes. Low-volume irrigation and microirrigation systems are designed to deliver water at a rate of 45 gallons per hour or less per exit point. The physical components required to apply water by low-volume irrigation or microirrigation methods include all equipment and

HB 245

2007

system components necessary to transport water from the pump or  
pumping station to the crop through the low-volume irrigation or  
microirrigation system. System components include pumps, pumping  
stations, control stations, filtration equipment pressure  
regulators, piping, tubing, emitters, valves, fittings, gauges,  
sensors, sprinklers, and safety devices.

Section 2. Paragraph (a) of subsection (5) of section  
 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and  
 storage tax; specified exemptions.--The sale at retail, the  
 rental, the use, the consumption, the distribution, and the  
 storage to be used or consumed in this state of the following  
 are hereby specifically exempt from the tax imposed by this  
 chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(a) Items in agricultural use and certain nets.--There are  
 exempt from the tax imposed by this chapter nets designed and  
 used exclusively by commercial fisheries; disinfectants,  
 fertilizers, insecticides, pesticides, herbicides, fungicides,  
 and weed killers used for application on crops or groves,  
 including commercial nurseries and home vegetable gardens, used  
 in dairy barns or on poultry farms for the purpose of protecting  
 poultry or livestock, or used directly on poultry or livestock;  
 portable containers or movable receptacles in which portable  
 containers are placed, used for processing farm products; field  
 and garden seeds, including flower seeds; nursery stock,  
 seedlings, cuttings, or other propagative material purchased for  
 growing stock; seeds, seedlings, cuttings, and plants used to

HB 245

2007

produce food for human consumption; cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm; and low-volume irrigation or microirrigation equipment or components, as defined in s. 212.02(34), used in agricultural production ~~generators used on poultry farms; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised~~; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein. Also exempt are cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

Section 3. This act shall take effect July 1, 2007.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 595  
**SPONSOR(S):** Frishe  
**TIED BILLS:**

Telephone Solicitation

**IDEN./SIM. BILLS:** SB 554

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	_____	Kaiser 	Reese 
2) <u>Environment &amp; Natural Resources Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 595 prohibits persons acting on behalf of a candidate for public office, or other political entity, from making politically oriented telephone calls to telephone numbers on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list. Both calls from live persons and those made using an automated dialing-announcing device (ADAD) are prohibited, if made to numbers currently on the "no sales solicitation calls" list. The bill provides a definition for "politically oriented telephone call."

The bill does not appear to have a fiscal impact on state or local governments. The effective date of this legislation is July 1, 2007.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty:** The bill prohibits calls of a political nature to individuals on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list.

#### B. EFFECT OF PROPOSED CHANGES:

Approximately 40 states have enacted telemarketing laws with do-not-call list requirements for consumers who do not wish to receive telemarketing sales calls at home. Some of the laws predate passage of the Telephone Consumer Protection Act of 1991 (TCPA), which restricts sales calls to telephone subscribers' homes. Florida was the first state to implement a state "do-not-call" registry, which preceded the Federal Communications Commission (FCC) and Federal Trade Commission's 2003 order establishing a national "do-not-call" registry.

Florida's "no sales solicitation calls" law currently has four exemptions: businesses with which a person has a current business relationship, newspapers, charities, and calls of a political nature.

Several states, including Florida, have a provision in their telemarketing law that separately addresses automatic dialing-announcing devices (ADADs). These devices are also known as "robo calls." The ADADs select and dial telephone numbers and working alone or with other equipment disseminate a prerecorded or synthesized voice message to the telephone number called.

Six states, Arkansas, Indiana, Minnesota, Montana, North Dakota, and Wyoming, have "robo call" laws broad enough to prohibit ADAD calls from political committees or campaigns. Existing Florida law does not prohibit "robo calls" from political committees or campaigns. The following table shows the "robo call" provision in each state's law applicable to calls from political parties or campaigns, citations to those provisions, and the penalties for violations.<sup>1</sup>

<b>States</b>	<b>Prohibition</b>	<b>Penalty</b>
Arkansas § 5-63-204	It is unlawful for anyone, in connection with a political campaign, to use an automated system that selects and dials telephone numbers and plays a recorded message when the called is completed. The prohibition does not apply to calls made in response to a call initiated by the recipient.	Class B misdemeanor and injunctions against future violations.
Indiana 24-5-14-5	No one may use or connect to a telephone line an ADAD unless (1) the person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the recipient's consent before the message is delivered.	Class C misdemeanor, penalties for a deceptive act, and injunctions against future violations.

<sup>1</sup> <http://www.cga.ct.gov/2006/rpt/2006-R-0717.htm>

Minnesota 325E. 27	No one can use or connect an ADAD to a telephone line unless the (1) person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message (defined to mean any call regardless of its content); or (2) message is immediately preceded by a live operator who obtains the consent of the person called before the message is delivered. The prohibition does not apply to messages (1) from a school district to a student, parent, or employee; (2) from callers to people with whom they have a current business or personal relationship; or (3) advising employees of work schedules.	A civil penalty of up to \$ 25,000, injunctions against future violations, and damages
Montana 45-8-216	No one may use an automated telephone system, device, or facsimile machine to select and dial telephone numbers and play recorded messages that, among other things, promote a political campaign or any use related to a political campaign. The prohibition does not apply if a live operator obtains the permission of the party called before the message is played.	A fine of up to \$ 2,500
North Dakota 51-28-02	No one can use or connect an ADAD to a telephone line unless the (1) person called has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message (defined to mean any call regardless of its content); or (2) message is immediately preceded by a live operator who obtains the consent of the person called before the message is delivered.  The prohibition does not apply to a message (1) from a public safety agency notifying a person of an emergency; (2) from a school district to a student, parent, or employee; (2) from callers to people with whom they have a current business relationship; or (3) advising an employee of a work schedule.	The attorney general may impose civil penalties of up to \$ 2,000 for each violation, issue a cease and desist order, and ask for and receive court costs.
Wyoming 6-6-104	No one may use an automated telephone system, device, or facsimile machine to select and dial telephone numbers and play recorded messages that, among other things, promotes a political campaign or any use related to a political campaign. The prohibition does not apply if the call is in response to an inquiry that the party called initiated.	A misdemeanor punishable by up to six months in prison, a \$ 750 fine, or both.

The laws in Indiana<sup>2</sup>, Minnesota<sup>3</sup>, and North Dakota<sup>4</sup> have withstood constitutional challenges alleging free speech, commerce and preemption violations.

It does not appear any laws have been enacted in other states prohibiting political calls from live persons to persons on a "no-calls" list; nor does there appear to have been constitutional challenges to that particular issue, and, therefore, no court rulings.

The bill prohibits persons acting on behalf of a candidate for public office, or other political entity, from making politically oriented telephone calls to telephone numbers on the Department of Agriculture and Consumer Services' "no sales solicitation calls" list. Politically oriented telephone calls made by a live person and those made using an ADAD are prohibited.

The bill defines a "politically oriented telephone call" as an outbound telephone call, the purpose of which is to promote, advertise, campaign for or against, or solicit donations on behalf of any political candidate or political issue, or which uses in the call a political candidate's name.

<sup>2</sup> *FreeEats.com, v. Indiana*, 2006 WL 3025810 (SD Ind.)

<sup>3</sup> *State by Humphrey v. Casino Marking Group*, 491 N.W.2d 882 (Minn. 1992)

<sup>4</sup> *State ex rel. Stenehjem v. FreeEats.com*, 712 N.W.2d 828 (2006 ND 84)

**C. SECTION DIRECTORY:**

**Section 1:** Amends s. 501.059, F.S.; providing a definition for "politically oriented telephone call"; prohibiting a politically oriented telephone call to telephone numbers appearing on the "no sales solicitation calls" list; and, prohibiting person acting on behalf of a candidate for federal office from making "politically oriented telephone calls" using an automated system.

**Section 2:** Provides an effective date of July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The impact on the private sector is unknown at this time. See fiscal comments.

**D. FISCAL COMMENTS:**

The Department of Agriculture and Consumer Services (department) must investigate any complaints concerning violations of these prohibited telephone solicitation calls, and solicitors found in violation could receive a civil penalty not to exceed \$10,000 per violation. Any revenues collected pursuant to these penalties would be deposited into the department's General Inspection Trust Fund. The number of complaints, verified violations and possible resulting penalties, however, are indeterminate at this time.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

This bill may raise constitutional concerns relating to free speech. However, there is case law<sup>5</sup> that has upheld laws relating to “robo calls” in other states.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

N/A

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<sup>5</sup> *FreeEats.com v. Indiana*, 2006 WL 3025810 (SD Ind.); *State by Humphrey v. Casino Marketing Group*, 491 N.W.2d 882 (Minn. 1992); *State ex rel. Stenehjem v. FreeEats.com*, 712 N.W.2d 828 (2006 ND 84); *Van Bergen v. State of Minnesota*, 59 F. 3d 1541 (Cir. App. 8<sup>th</sup>, 1995); *Frisby v. Schultz* 487 U.S. 474, 108 S. Ct. 2495 (1988)

HB 595

2007

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; defining the term "politically oriented telephone call"; prohibiting a telephone solicitor or person acting on behalf of a candidate for a federal, state, or local political office, committee of continuous existence, or other political entity from making a politically oriented telephone call to a person whose number is in the "no sales solicitation calls" list maintained by the Department of Agriculture and Consumer Services or which involves the playing of a recorded message; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (j) is added to subsection (1) of section 501.059, Florida Statutes, and subsections (4) and (7) of that section are amended, to read:

501.059 Telephone solicitation.--

(1) As used in this section:

(j) "Politically oriented telephone call" means an outbound telephone call, the purpose of which is to promote, advertise, campaign for or against, or solicit donations on behalf of any political candidate or political issue, or which uses in the call a political candidate's name.

(4)(a) A ~~no~~ telephone solicitor may not ~~shall~~ make or cause to be made any unsolicited telephonic sales call or a politically oriented telephone call to any residential, mobile,

HB 595

2007

29 or telephonic paging device telephone number if the number for  
30 that telephone appears in the then-current quarterly listing  
31 published by the department.

32 (b) Any telephone solicitor or person who offers for sale  
33 any consumer information that ~~which~~ includes residential,  
34 mobile, or telephonic paging device telephone numbers, except  
35 directory assistance and telephone directories sold by telephone  
36 companies and organizations exempt under s. 501(c)(3) or (6) of  
37 the Internal Revenue Code, shall screen and exclude those  
38 numbers that ~~which~~ appear on the division's then-current "no  
39 sales solicitation calls" list.

40 (c) This subsection does not apply to any person licensed  
41 under ~~pursuant to~~ chapter 475 who calls an actual or prospective  
42 seller or lessor of real property when the ~~such~~ call is made in  
43 response to a yard sign or other form of advertisement placed by  
44 the seller or lessor.

45 (7)(a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a  
46 telephonic sales call to be made if the ~~such~~ call involves an  
47 automated system for the selection or dialing of telephone  
48 numbers or the playing of a recorded message when a connection  
49 is completed to a number called.

50 (b) A person acting on behalf of a candidate for a  
51 federal, state, or local political office, committee of  
52 continuous existence, or other political entity may not make or  
53 knowingly allow a politically oriented telephone call to be made  
54 to any number on the department's "no sales solicitation calls"  
55 list if the call involves the playing of a recorded message when  
56 a connection is completed to the number called or if the call is

HB 595

2007

a telephone call commonly referred to as a "robo call."

~~(c)(b)~~ This subsection does not prohibit ~~Nothing herein~~  
~~prohibits~~ the use of an automated telephone dialing system with  
live messages if the calls are made or messages given solely in  
response to calls initiated by the persons to whom the automatic  
calls or live messages are directed or if the telephone numbers  
selected for automatic dialing have been screened to exclude any  
telephone subscriber who is included on the department's then-  
current "no sales solicitation calls" listing or any unlisted  
telephone number, or if the calls made concern goods or services  
that have been previously ordered or purchased.

~~(d)(e)~~ A ~~It shall be unlawful for any person who makes a~~  
telephonic sales call or causes a telephonic sales call to be  
made may not ~~to~~ fail to transmit or cause not to be transmitted  
the telephone number and, when made available by the telephone  
solicitor's carrier, the name of the telephone solicitor to any  
caller identification service in use by a recipient of a  
telephonic sales call. However, it is ~~shall not be~~ a violation  
to substitute, for the name and telephone number used in or  
billed for making the call, the name of the seller on behalf of  
which a telephonic sales call is placed and the seller's  
customer service telephone number, which is answered during  
regular business hours. For purposes of this section, the term  
"caller identification service" means a service that allows a  
telephone subscriber to have the telephone number and, where  
available, the name of the calling party transmitted  
contemporaneously with the telephone call and displayed on a  
device in or connected to the subscriber's telephone.

HB 595

2007

85        (e) ~~(d)~~ A ~~It shall be unlawful for any~~ person who makes a  
86        telephonic sales call or causes a telephonic sales call to be  
87        made may not ~~to~~ intentionally alter the voice of the caller in  
88        an attempt to disguise or conceal the identity of the caller in  
89        order to defraud, confuse, or financially or otherwise injure  
90        the recipient of a telephonic sales call or in order to obtain  
91        personal information from the recipient of a telephonic sales  
92        call which may be used in a fraudulent or unlawful manner.

93        Section 2. This act shall take effect July 1, 2007.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 651

Department of Agriculture and Consumer Services

**SPONSOR(S):** Boyd

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Agribusiness		Kaiser <i>JK</i>	Reese <i>AR</i>
2) Environment & Natural Resources Council			
3) Policy & Budget Council			
4) _____			
5) _____			

### SUMMARY ANALYSIS

HB 651 addresses a variety of issues relating to the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Proposes a two-year registration cycle for pesticide brands. The proposed biennial registration fee is double the current annual fee. For new pesticide product brand registration applications, registrants will pay for either a one-year or two-year registration depending on when the new pesticide product brand application is submitted.
- Authorizes the department to impose late fees of \$25 per pesticide brand for each month a payment is late, not to exceed a total of \$250 per pesticide brand.
- Revises date references to the Code of Federal Regulations (C.F.R.).
- Revises definitions of certain milk products to coincide with the definitions reflected in the federal Grade "A" Pasteurized Milk Ordinance, which was amended in 2005.
- Transfers the permitting of milk manufacturing plants to the department's Division of Dairy.
- Abolishes the practice of issuing temporary permits to milk haulers because the federal Grade "A" Pasteurized Milk Ordinance of 2005 no longer recognizes those permits.
- Clarifies the venues in which manufactured milk products and cheese may be sold. The bill also modifies state law to mirror federal law regarding the sale of cheese made from raw milk.
- Deletes sections of law relating to the establishment, branding and other requirements for seed trees. These sections of law have never been implemented and are, therefore, unnecessary.
- Creates the Consumer Fireworks Task Force, charged with reviewing and evaluating issues relating to the proper use of fireworks, regulation of temporary sale facilities for consumer fireworks, and regulation of hours and location for use of consumer fireworks, studying funding options for fire official training and education, as well as funding options for clean-up of expended consumer fireworks products.

The bill appears to have a minimal fiscal impact on state and local governments. The effective date of this legislation is July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Pesticide Registration**

**Ensure lower taxes:** The bill authorizes the Department of Agriculture and Consumer Services (department) to impose a late fee for registrants failing to register pesticide brands in a timely manner. **Promote personal responsibility:** The bill changes the registration cycle for pesticide brands from a yearly to a biennial registration in an effort to reduce paperwork for both the department and the registrants.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Pesticide Registration**

Current law<sup>1</sup> authorizes the Department of Agriculture and Consumer Services (department) to collect annual renewal fees for pesticide registration, which number approximately 1,500 applicants registering 13,000 pesticide brands annually. The Pesticide Registration section has reduced its staff by 25% in the past year, however the continuance of annual registration renewals has created a backlog in filing, as well as identifying non-compliant pesticide brands.

The bill proposes a two-year registration cycle. The proposed biennial registration fee is double the annual fee. For new pesticide product brand registration applications, registrants will pay for either a one-year or two-year registration depending on when the new pesticide product brand application is submitted. New registrations submitted in an odd year will pay the two-year fee; new registrations submitted in an even year will pay a one year fee. The department anticipates the implementation of this proposal will result in a reduction in workload, enabling staff to concentrate on backlogged files and identifying non-compliant pesticide brands.

Additionally, the bill authorizes the department to impose late fees of \$25 per brand for each month a payment is late, not to exceed a total of \$250 per brand. Currently, there is no incentive to submit renewals on time since the department doesn't have the authority to collect late fees. The department's Bureau of Pesticides estimates that approximately 25% of current registrants are late in submitting their annual renewal applications and fees, with some registrants submitting their renewals as late as six to eight months after the January renewal date. By imposing late fees, the department anticipates a more timely collection of revenue as well as increased staff efficiency.

Lastly, in regards to pesticide registration, the bill clarifies that registration requirements apply to each brand of pesticide, rather than every pesticide.

##### **Bottled Water**

The bill revises a date reference to the Code of Federal Regulations (C.F.R.). The federal regulations are updated periodically making it necessary for the state to update the statutory reference to the C.F.R. as well.

##### **Milk Products**

The bill revises definitions in statute to coincide with the definitions reflected in the federal Grade "A" Pasteurized Milk Ordinance, which was amended in 2005.

Currently, the permitting of milk manufacturing plants falls under the jurisdiction of the department's Division of Food Safety. The bill transfers that authority to the department's Division of Dairy. The bill also abolishes the practice of issuing temporary permits to milk haulers because the federal Grade "A" Pasteurized Milk Ordinance of 2005 no longer recognizes those permits.

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<sup>1</sup> s. 487.045, F.S.

Current law is unclear regarding the venues within the state where manufactured milk products and cheese may be sold. The bill spells out that these items may be sold as retail in food service establishments licensed under chapter 381, F.S.<sup>2</sup>, food establishments as defined in chapter 500, F.S.<sup>3</sup>, or public food service establishments as defined in chapter 509, F.S.<sup>4</sup> Additionally, the bill modifies state law to mirror federal law regarding the retail sale of cheese made from raw milk.<sup>5</sup> This change allows cheese made from raw milk to be sold at retail to the final consumer or to specified food service establishments provided the cheese is aged more than 60 days at a temperature above 35° F.

### **Forestry**

The bill deletes sections of law relating to the establishment, branding and other requirements for seed trees. These sections of law have never been implemented and are, therefore, unnecessary. Genetically improved seed now comes from seed orchards that produce trees with greater disease resistance and growth than those occurring naturally.

### **Consumer Fireworks Task Force**

Current statutory authority<sup>6</sup> for the regulation of fireworks in the state is assigned to the Division of the State Fire Marshall of the Department of Financial Services, however much of the enforcement of this law is delegated to local fire and law enforcement departments. Items such as sparklers, snakes, small smoke devices, trick noisemakers and certain other novelties are allowed for sale to the general public. Firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, and any fireworks containing explosive or flammable compounds may only be purchased by authorized persons<sup>7</sup> who have obtained a permit from the county in which the fireworks are to be displayed. According to a report issued by the Senate Committee on Banking and Insurance<sup>8</sup> in November 2004, approximately 65 cities and 10 counties have enacted ordinances providing for stricter enforcement of fireworks and sparklers sales. The report states, "...the decision in 2002 by the Third District Court of Appeal in *State v. Miketa*, 824 So.2d (Fla. 3<sup>rd</sup> DCA 2002) has rendered the fireworks law virtually unenforceable..."

According to the report, "the *Miketa* case involved the criminal prosecution of an individual for the illegal sale of fireworks to an undercover detective in violation of s. 791.04, F.S. The State argued that when a purchaser of fireworks executes an affidavit (declaring that the purchaser meets one of the statutorily provided exemptions for sales under s. 791.04, F.S.), the seller of the fireworks must request further documentation to establish the transaction is, in fact, exempt. "

The report goes on to say, "the decision of the *Miketa* case has rendered the proscriptions against selling illegal fireworks "meaningless" according to the Director of the State Fire Marshall's office.<sup>9</sup> This is because fireworks sellers routinely use these affidavits and require buyers to sign these forms "falsely", stating that they are purchasing fireworks under one of the exemptions when in fact they are not, according to the Director and other fire officials. Since the affidavit is not verified, virtually anyone can purchase illegal fireworks. These officials further state that they do not know of any successful prosecutions which have occurred under the fireworks law."

Legislative findings in this bill agree that:

- there is a need for better training and education regarding the safe use of consumer fireworks;
- the state regulation of fireworks provides an insufficient definition of consumer fireworks and related products used by consumers;

<sup>2</sup> Detention facilities, child care facilities, schools, institutions, civic or fraternal organizations, bars and lounges and facilities used as temporary food events, mobile food units, and vending machines.

<sup>3</sup> Factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail.

<sup>4</sup> Restaurants

<sup>5</sup> C.F.R. part 58 (2006)

<sup>6</sup> Chapter 791, F.S.

<sup>7</sup> s. 791.02, F.S.

<sup>8</sup> *Enforcing the Ban on the Retail Sale of Fireworks*, Interim Project Report 2005-108, Senate Committee on Banking and Insurance

<sup>9</sup> Memorandum to committee staff from Randall Napoli, Director, October 25, 2004.

- there should be a mechanism to help local governments fund the clean-up following the use of consumer fireworks on public property;
- local government regulation of the agricultural uses authorized by s. 791.012, F.S., are inconsistent with legitimate agricultural purposes;
- there is a need for consumer education regarding the safety standards in the use of consumer fireworks;
- there is a need for standards regarding temporary retail facilities selling consumer fireworks; and,
- the state would benefit from additional funding for the training and education of fire officials.

The bill creates the Consumer Fireworks Task Force (task force) within the Department of Agriculture and Consumer Services (department). The task force is charged with reviewing issues relating to the proper use of consumer fireworks, regulation of temporary sale facilities for consumer fireworks, regulation of the hours and location of the use of consumer fireworks, as well as studying funding options for fire official training and education and clean-up of expended consumer fireworks products.

The task force shall be comprised of seven members: two members appointed by the President of the Senate; two members appointed by the Speaker of the House of Representatives; two members appointed by the Commissioner of Agriculture; and one member appointed by the Chief Financial Officer. The task force must choose a chair and vice-chair from its membership.

The bill provides for the members of the task force to serve without compensation; however, they will be entitled to per diem and travel expenses. The department shall provide staffing for the task force.

After reviewing and evaluating the issues set forth in the bill, and taking public testimony, the bill requires a report of the recommendations and findings of the task force be submitted to the Legislature by January 15, 2008. Upon submission of the report, the bill calls for the abolishment of the task force.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 487.041, F.S.; revising registration requirements for brands of pesticides sold in the state; providing an expiration date for registration of brands of pesticides; providing for late fees for brands of pesticides not registered in timely fashion; providing for biennial registration of brands of pesticides; revising the registration fee; and, providing for fees to be deposited into the General Inspection Trust Fund.

**Sections 2 & 3:** Amends ss. 500.03, and 500.147, F.S.; updating reference to Code of Federal Regulations (C.F.R.), which was amended in 2006.

**Section 4:** Amends s. 502.012, F.S.; revising definitions.

**Section 5:** Amends s. 502.014, F.S.; revising the department's rule-making authority relating to lowfat cottage cheese; and, conforming terminology.

**Section 6:** Amends s. 502.053, F.S.; revising permitting requirements for certain milk plants; and, deleting a provision authorizing the department to issue a temporary permit to milk haulers.

**Section 7:** Amends s. 502.054, F.S.; conforming terminology.

**Section 8:** Amends s. 502.091, F.S.; clarifying provisions governing the sale of milk and milk products; specifying the types of food establishments at which such products may be sold; and, providing requirements for the sale of cheese made from raw milk.

**Section 9:** Repeals ss. 591.27-591.34, F.S.; relating to the designation, marking and cutting of seed trees.

**Section 10:** Creates the Consumer Fireworks Task Force within the department; providing legislative findings; providing for task force membership; providing for selection of chair and vice chair; providing for members to receive per diem and travel expenses but no compensation; directing the department to provide staffing for the task force; and, providing for a report to the Legislature by January 15, 2008, upon which the task force will be abolished.

**Section 11:** Provides an effective date of July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

	(FY 07-08) <u>Amount/FTE</u>	(FY 08-09) <u>Amount/FTE</u>	(FY 09-10) <u>Amount/FTE</u>
<b>Pesticide Registration</b>			
Recurring <sup>10</sup>	-0-	-0-	-0-

Non-Recurring  
Indeterminate, see Fiscal Comments.

#### 2. Expenditures:

<b>Pesticide Registration</b>			
Recurring <sup>11</sup>	-0-	-0-	-0-
Non-Recurring <sup>12</sup>	5,000	-0-	-0-
<b>Consumer Fireworks Task Force</b>			
5 meetings/2 days each/7 members	14,000		
Facilitator/\$400 day	4,000		
Facilitator expenses	1,000		
Department staff	4,000		
Printing	1,000		
Meeting rooms	<u>3,000</u>		
<b>Total expenses</b>	<b>27,000</b>	<b>-0-</b>	<b>-0-</b>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

<sup>10</sup> Biennial fee schedule – Fees will be collected once every two years, rather than once per year. No net changes in total revenues for registration fees collected are anticipated. Revenues will be deferred over the two-year registration cycle and deposited into the General Inspection Trust Fund for use by the Department of Agriculture and Consumer Services in carrying out the provisions of Chapter 487, F.S.

<sup>11</sup> Biennial fee schedule and late fees – There are no additional expenditures incurred in the conversion to a biennial fee schedule or implementation of a late fee.

<sup>12</sup> Biennial fee schedule and late fees – The initial conversion to a biennial fee schedule and implementation of a late fee will result in a \$5,000 one-time expenditure to modify the existing database for tracking pesticide registration activation and renewal and the e-commerce site for revenue collection.

2. Expenditures:

If recommended by the Consumer Fireworks Task Force, local governments may be asked to provide funds for clean-up following use of consumer fireworks on public property.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Pesticide Registration**

Implementation of the late fee will only impact those companies that submit their renewal fee after the deadline of January 31 of the renewal year. The renewal notifications are mailed in November prior to the renewal year, allowing over 60 days for the companies to remit the renewal fees.

**Consumer Fireworks Task Force**

Pending recommendations of the task force, sellers of consumer fireworks may need to comply with any new standards set forth concerning tents and other temporary retail facilities.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services states that imposing late fees could result in a nonrecurring increase to the General Inspection Trust Fund totaling as much as \$223,312 during the 2008 debut registration cycle, and potentially half of that amount in 2009. The level of revenues would be expected to decline significantly in subsequent registration cycles since late fees would be collected only once every two years and since registrants who have experienced late fees would likely become more proactive in registering on time. The primary benefits of late fees would be to help synchronize the registration renewal process and bring in revenues earlier in the year.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **HB 651**

COUNCIL/COMMITTEE ACTION

ADOPTED                               \_\_\_ (Y/N)  
ADOPTED AS AMENDED               \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION           \_\_\_ (Y/N)  
FAILED TO ADOPT                   \_\_\_ (Y/N)  
WITHDRAWN                         \_\_\_ (Y/N)  
OTHER                               \_\_\_

Council/Committee hearing bill: Agribusiness Committee  
Representative Boyd offered the following:

**Strike-all Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Present subsections (1), (2), (3), and (8) and paragraphs (b) and (d) of subsection (4) of section 487.041, Florida Statutes, are amended, and a new subsection (1) is added to that section, to read:

487.041 Registration.--

(1)(a) Each brand of pesticide, as defined in s. 487.021, that is distributed, sold, or offered for sale, except as provided in this subsection, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed annually. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

21       1. The name, business mailing address, and street address  
22 of the registrant.

23       2. The name of the brand of pesticide.

24       3. An ingredient statement and a complete copy of the  
25 labeling accompanying the brand of the pesticide, which must  
26 conform to the registration, and a statement of all claims to be  
27 made for it, including directions for use and a guaranteed  
28 analysis showing the names and percentages by weight of each  
29 active ingredient, the total percentage of inert ingredients,  
30 and the names and percentages by weight of each "added  
31 ingredient."

32       (b) For the purpose of defraying expenses of the  
33 department in connection with carrying out the provisions of  
34 this part, each person shall pay an annual registration fee of  
35 \$250 for each registered brand of pesticide. The annual  
36 registration fee for each special local need label and  
37 experimental use permit is \$100. All registrations expire on  
38 December 31 of each year. If the renewal of a brand of  
39 pesticide, including the special local need label and  
40 experimental use permit, is not filed by January 31 of the  
41 renewal year, an additional fee of \$25 per brand of pesticide  
42 shall be assessed per month and added to the original fee. This  
43 additional fee may not exceed \$250 per brand of pesticide. The  
44 additional fee must be paid by the registrant before the renewal  
45 certificate for the registration of the brand of pesticide is  
46 issued.

47       (c) This subsection does not apply to distributors or  
48 retail dealers selling brands of pesticide if such brands of  
49 pesticide are registered by another person.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

(d) This subsection expires at midnight, December 31, 2008.

(2) (a) ~~(1)~~ Effective January 1, 2009, each brand of Every pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must ~~shall~~ be registered in the office of the department, and such registration shall be renewed biennially ~~annually~~. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. ~~(a)~~ The name, business mailing address, and street address of the registrant.

2. ~~(b)~~ The name of the brand of pesticide.

3. ~~(c)~~ An ingredient statement and a complete copy of the labeling accompanying the brand of the pesticide, which must ~~shall~~ conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) ~~(2)~~ Effective January 1, 2009, for the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each person shall pay a biennial ~~an annual~~ registration fee ~~of \$250~~ for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

each odd-numbered year and expiring on December 31 of the following year. ~~The annual registration fee for each special local need label and experimental use permit shall be \$100. All registrations expire on December 31 of each year. Nothing in this section shall be construed as applying to distributors or retail dealers selling pesticides when such pesticides are registered by another person.~~

(c) Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a fee of \$500 per brand of pesticide and a fee of \$200 for each special local need label and experimental use permit, and the registration shall expire on December 31 of the following year. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a fee of \$250 per brand of pesticide and fee of \$100 for each special local need label and experimental use permit, and the registration shall expire on December 31 of that year.

(d) All revenues collected, less those costs determined by the department to be nonrecurring or one-time costs, shall be deferred over the 2-year registration period, deposited in the General Inspection Trust Fund, and used by the department in carrying out the provisions of this chapter.

(e) If the renewal of a brand of pesticide, including the special local need label and experimental use permit, is not filed by January 31 of the renewal year, an additional fee of \$25 per brand of pesticide shall be assessed per month and added to the original fee. This additional fee may not exceed \$250 per brand of pesticide. The additional fee must be paid by the registrant before the renewal certificate for the registration

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

109 of the brand of pesticide is issued. The additional fee shall be  
110 deposited into the General Inspection Trust Fund.

111 (f) This subsection does not apply to distributors or  
112 retail dealers selling brands of pesticide if such brands of  
113 pesticide are registered by another person.

114 (3) The department shall adopt rules governing the  
115 procedures for the registration of a brand of pesticide  
116 ~~registration~~ and for the review of data submitted by an  
117 applicant for registration of the brand of a pesticide. The  
118 department shall determine whether the brand of a pesticide  
119 should be registered, registered with conditions, or tested  
120 under field conditions in this state. The department shall  
121 determine whether each request ~~that all requests~~ for  
122 registration of a brand of pesticide meets ~~registrations meet~~  
123 the requirements of current state and federal law. The  
124 department, whenever it deems it necessary in the administration  
125 of this part, may require the manufacturer or registrant to  
126 submit the complete formula, quantities shipped into or  
127 manufactured in the state for distribution and sale, evidence of  
128 the efficacy and the safety of any pesticide, and other relevant  
129 data. The department may review and evaluate a registered  
130 pesticide if new information is made available that ~~which~~  
131 indicates that use of the pesticide has caused an unreasonable  
132 adverse effect on public health or the environment. Such review  
133 shall be conducted upon the request of the Secretary ~~of the~~  
134 ~~Department~~ of Health in the event of an unreasonable adverse  
135 effect on public health or the Secretary ~~of the Department~~ of  
136 Environmental Protection in the event of an unreasonable adverse  
137 effect on the environment. Such review may result in  
138 modifications, revocation, cancellation, or suspension of the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

139 registration of a brand of pesticide ~~registration~~. The  
140 department, for reasons of adulteration, misbranding, or other  
141 good cause, may refuse or revoke the registration of the brand  
142 of any pesticide, after notice to the applicant or registrant  
143 giving the reason for the decision. The applicant may then  
144 request a hearing, pursuant to chapter 120, on the intention of  
145 the department to refuse or revoke registration, and, upon his  
146 or her failure to do so, the refusal or revocation shall become  
147 final without further procedure. ~~The In no event shall~~  
148 registration of a brand of pesticide may not be construed as a  
149 defense for the commission of any offense prohibited under this  
150 part.

151 (4) The department, in addition to its other duties under  
152 this section, has the power to:

153 (b) Formally request the United States Environmental  
154 Protection Agency to require registrants of pesticides to  
155 provide the department with environmental test data generated in  
156 this state or generated by simulating environmental conditions  
157 in this state.

158 (d) Require a registrant who discontinues the distribution  
159 of a brand of pesticide in this state to continue the  
160 registration of the brand of the pesticide for a minimum of 2  
161 years or until no more remains on retailers' shelves  
162 ~~if or 2 years after written notice to the department of date of~~  
163 ~~discontinuance; provided~~ such continued registration or sale is  
164 not specifically prohibited by the department or the United  
165 States Environmental Protection Agency.

166 (8) ~~Nothing in~~ This section does not affect ~~affects~~ the  
167 authority of the department to administer the pesticide  
168 registration program under this part or the authority of the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Commissioner of Agriculture to approve the registration of a  
brand of pesticide.

Section 2. Paragraphs (d) and (n) of subsection (1) of  
section 500.03, Florida Statutes, are amended to read:

500.03 Definitions; construction; applicability.--

(1) For the purpose of this chapter, the term:

(d) "Bottled water" means a beverage, as described in 21  
C.F.R. part 165 (2006)~~(1996)~~, that is processed in compliance  
with 21 C.F.R. part 129 (2006)~~(1996)~~.

(n) "Food establishment" means any factory, food outlet,  
or any other facility manufacturing, processing, packing,  
holding, or preparing food, or selling food at wholesale or  
retail. The term does not include any business or activity that  
is regulated under chapter 509 or chapter 601. The term includes  
tomato packinghouses but also does not include any other  
establishments that pack fruits and vegetables in their raw or  
natural states, including those fruits or vegetables that are  
washed, colored, or otherwise treated in their unpeeled, natural  
form before they are marketed.

Section 3. Paragraph (a) of subsection (3) of section  
500.147, Florida Statutes, is amended to read:

500.147 Inspection of food establishments and vehicles;  
food safety pilot program.--

(3) For bottled water plants:

(a) Bottled water must be from an approved source. Bottled  
water must be processed in conformance with 21 C.F.R. part 129  
(2006)~~(1996)~~, and must conform to 21 C.F.R. part 165  
(2006)~~(1996)~~. A person operating a bottled water plant shall be  
responsible for all water sampling and analyses required by this  
chapter.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Section 4. Section 502.012, Florida Statutes, is amended to read:

502.012 Definitions.--The following definitions shall apply in the interpretation and enforcement of this law:

(1) "Bulk milk pickup tanker" means a vehicle, including the truck and tank, and necessary attachments, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(2) "Dairy farm" means any place or premises where one or more cows, ~~or~~ goats, sheep, water buffalo, or other hooved mammals are kept, and from which a part or all of the milk is provided, sold, or offered for sale ~~to a milk plant, receiving station, or transfer station.~~

(3) "Department" means the Department of Agriculture and Consumer Services.

~~(4)-(15)~~ (4) "Grade 'A' pasteurized milk ordinance" means the document entitled "Grade 'A' Pasteurized Milk Ordinance, United States Department of Health and Human Services, Public Health Service, Food and Drug Administration Publication No. 229," including all associated appendices, as adopted by department rule.

~~(5)-(4)~~ (5) "Imitation milk and imitation milk products" means those foods that have the physical characteristics, such as taste, flavor, body, texture, or appearance, of milk or milk products as defined in this chapter and the Grade "A" pasteurized milk ordinance, but do not come within the definition ~~definitions~~ of "milk" or "milk products," and are nutritionally inferior to the product imitated.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

228       (6)(5) "Milk" means the lacteal secretion, practically  
229 free from colostrum, obtained by the complete milking of one or  
230 more healthy cows, or goats, sheep, water buffalo, or other  
231 hooved mammals.

232       (7)(6) "Milk distributor" means any person who offers for  
233 sale or sells to another person any milk or milk product.

234       (8)(7) "Milk products" means products made with milk that  
235 is processed in some manner, including being whipped, acidified,  
236 cultured, concentrated, lactose-reduced, or sodium-reduced or  
237 aseptically processed, or having the addition or subtraction of  
238 milkfat, the addition of safe and suitable microbial organisms,  
239 or the addition of safe and suitable optional ingredients for  
240 protein, vitamin, or mineral fortification. "Milk products" do  
241 not include products such as evaporated milk, condensed milk,  
242 eggnog in a rigid metal container, dietary products, infant  
243 formula, or ice cream and other desserts, dry milk products,  
244 canned eggnog in a rigid metal container, butter, or cheese,  
245 except when the products are combined with other substances to  
246 produce any pasteurized or aseptically processed milk product.

247       (9)(8) "Milkfat" or "butterfat" means the fat contained in  
248 milk.

249       (10)(9) "Milk hauler" means any person who transports raw  
250 milk or raw milk products to or from a milk plant, receiving  
251 station, or transfer station.

252       (11)(10) "Milk plant" means any place, premises, or  
253 establishment where milk or milk products are collected,  
254 handled, processed, stored, pasteurized, aseptically processed,  
255 bottled, or prepared for distribution.

256       (12)(11) "Milk plant operator" means any person  
257 responsible for receiving, processing, pasteurizing, or

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

packaging milk and milk products, or performing any other related operation.

~~(13)~~~~(12)~~ "Milk producer" means any person who operates a dairy farm and provides, sells, or offers for sale milk to a milk plant, receiving station, or transfer station.

~~(14)~~~~(13)~~ "Milk tank truck" means either a bulk milk pickup tanker or a milk transport tank.

~~(15)~~~~(14)~~ "Milk transport tank" means a vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

(16) "Raw milk" means unprocessed milk.

(17) "Receiving station" means any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and is prepared for further transporting.

(18) "Substitute milk and substitute milk products" means those foods that have the physical characteristics, such as taste, flavor, body, texture, or appearance, of milk or milk products as defined in this chapter and the Grade "A" pasteurized milk ordinance, but do not come within the definition ~~definitions~~ of "milk" or "milk products," and are nutritionally equivalent to the product for which they are substitutes.

(19) "Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

(20) "Washing station" means any place, premises, or establishment where milk tank trucks are cleaned and sanitized.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Section 5. Subsections (4) and (6) of section 502.014, Florida Statutes, are amended to read:

502.014 Powers and duties.--

(4) The department shall define by rule "cottage cheese," and "dry-curd cottage cheese," ~~and "lowfat cottage cheese."~~ The department shall periodically update these definitions to maintain conformity with the federal definitions.

(6) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter. In adopting these rules, the department shall be guided by and may conform to the definitions and standards of the administrative procedures and provisions of the Grade "A" pasteurized milk ordinance. The rules shall include, but are not limited to:

(a) Standards for milk and milk products.

(b) Provisions for the production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products and imitation and substitute milk and milk products sold for public consumption in this state.

(c) Provisions for the inspection of dairy herds, dairy farms, and milk plants.

(d) Provisions for the issuance and revocation of permits issued by the department pursuant to this chapter.

Section 6. Paragraph (a) of subsection (1), subsection (2), and paragraph (a) of subsection (4) of section 502.053, Florida Statutes, are amended to read:

502.053 Permits; requirements; exemptions; temporary permits.--

(1) PERMITS.--

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

(a) Each Grade A milk plant, whether located in the state or outside the state, and each manufacturing milk plant, milk producer, milk hauler, milk hauling service, washing station operator, milk plant operator, milk distributor, single-service-container manufacturer, receiving station, and transfer station in the state, shall apply to the department for a permit to operate. The application shall be on forms developed by the department.

(2) REQUIREMENTS.--

(a) To obtain a permit, an applicant must satisfy all requirements that are defined by the department in rule and must agree to comply with the applicable provisions of this chapter and rules adopted ~~promulgated~~ under this chapter.

(b) All permitholders must maintain records of transactions concerning the procurement, production, and processing of milk and milk products as required in the Grade "A" pasteurized milk ordinance and grant department inspectors access to such records during all reasonable hours.

(c) In addition to the testing required in the Grade "A" pasteurized milk ordinance and its appendices, each milk plant operator in the state shall be responsible for routine testing and inspection of raw milk shipped from outside the state prior to processing and shall notify the department when such testing and inspection indicate ~~indicates~~ a violation of the standards contained in the Grade "A" pasteurized milk ordinance.

(4) TEMPORARY PERMITS.--

(a) The department may issue a temporary permit for a period not exceeding 90 days to milk producers ~~and milk haulers~~ who have submitted an application to the department and passed a

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

preliminary inspection as required in the Grade "A" pasteurized milk ordinance.

Section 7. Section 502.054, Florida Statutes, is amended to read:

502.054 Inspection and reinspection.--The department shall establish a schedule for inspections which shall require routine inspections in accordance with the minimum requirements contained in the Grade "A" pasteurized milk ordinance and more frequent inspections or reinspections for permitholders with serious or repeated violations.

Section 8. Subsection (1) of section 502.091, Florida Statutes, is amended to read:

502.091 Milk and milk products which may be sold.--

(1) Only Grade A pasteurized milk and milk products, pasteurized manufactured milk products, and cheese made from pasteurized milk shall be sold at retail to the final consumer or to food service establishments as defined in chapter 381, food establishments as defined in chapter 500, or public food service establishments as defined in chapter 509 ~~restaurants, soda fountains, grocery stores, or similar establishments.~~ Cheese made from raw milk may also be sold at retail to the final consumer or to food service establishments as defined in chapter 381, food establishments as defined in chapter 500, or public food service establishments as defined in chapter 509 if the cheese is aged more than 60 days at a temperature above 35° F.

(a) In an emergency, however, the department may authorize the sale of reconstituted pasteurized milk products, or pasteurized milk and milk products that have not been graded or the grade of which ~~that~~ is unknown, in which case such milk and

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

milk products shall be appropriately labeled, as determined by the department.

(b) If the department determines that milk is fit for human consumption even though it is less than Grade A because the producer failed to comply with the sanitation or bacterial standards defined in this chapter, or if any specific shipment of milk fails to comply with standards of the Grade "A" pasteurized milk ordinance, the department may issue a permit allowing the milk to be used in ungraded products, such as frozen desserts, which are being processed by such milk plant. During processing of such milk, it shall be pasteurized at a temperature of at least 175° F. for at least 15 seconds or at least 160° F. for at least 30 minutes.

Section 9. Sections 591.27, 591.28, 591.29, 591.30, 591.31, 591.32, 591.33, and 591.34, Florida Statutes, are repealed.

Section 10. Consumer Fireworks Task Force.--

(1) The Legislature finds that:

(a) The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;

(b) There is a need for better training and education concerning the safe use of consumer fireworks;

(c) There should be a mechanism to help local governments fund the clean up following the use of consumer fireworks on public property;

(d) Local government regulation of the agricultural uses authorized by s. 791.012, Florida Statutes, are inconsistent with legitimate agricultural purposes;

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

405       (e) There is a need for consumer education relating to  
406       safety standards in the use of consumer fireworks;

407       (f) There is a need for standards concerning tents and  
408       other temporary retail facilities selling consumer fireworks;  
409       and

410       (g) The state would benefit from additional funding for  
411       the training and education of fire officials.

412       (2) (a) There is hereby created the Consumer Fireworks Task  
413       Force within the Department of Agriculture and Consumer Services  
414       for the purpose of studying the issues concerning the use of and  
415       proper use of consumer fireworks, regulation of temporary sale  
416       facilities for consumer fireworks, and regulation of the hours  
417       and location of the use of consumer fireworks; studying funding  
418       options for fire official training and education; and studying  
419       funding options for clean-up of expended consumer fireworks  
420       products.

421       (b)1. The task force shall consist of seven members  
422       appointed as follows: two members appointed by the President of  
423       the Senate; two members appointed by the Speaker of the House of  
424       Representatives; two members appointed by the Commissioner of  
425       Agriculture; and one member appointed by the Chief Financial  
426       Officer.

427       2. Members shall choose a chair and vice-chair from its  
428       membership.

429       3. Members shall serve without compensation, except that  
430       members are entitled to per diem and travel expenses, pursuant  
431       to s. 112.061, Florida Statutes, incurred in the performance of  
432       their duties.

433       (3) Staffing for the task force shall be provided by the  
434       Department of Agriculture and Consumer Services.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

(4) The task force shall review and evaluate the issues identified in paragraph (2) (a) and take public input and testimony concerning the issues. A report of the recommendations and findings of the task force shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2008, and the task force shall be abolished upon the transmittal of the report.

Section 11. Paragraph (e) is added to subsection (2) of section 570.07, Florida Statutes, and subsection (6) of that section is amended, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.--The department shall have and exercise the following functions, powers, and duties:

(2) To perform all regulatory and inspection services relating to agriculture except agricultural education, demonstration, research, and those regulatory functions assigned by law to other state agencies. In doing this, the department may:

(e) Except as expressly prohibited by law, use any of the trained personnel in the various divisions of the department in performing the regulatory and inspection services relating to agriculture.

(6) To foster and encourage the standardizing, grading, inspection, labeling, handling, storage, and marketing of agricultural products; to enhance the food safety of tomatoes and, after investigation and public hearings, to cooperate with the United States Department of Agriculture, to establish and promulgate standard grades and other standard classifications of and for agricultural products; and to establish and adopt

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

requirements for enhancing food safety, in cooperation with appropriate agencies.

Section 12. Present paragraph (e) of subsection (2) of section 570.48, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (e) is added to that subsection, to read:

570.48 Division of Fruit and Vegetables; powers and duties; records.--The duties of the Division of Fruit and Vegetables include, but are not limited to:

(2)

(e) Performing tomato food safety inspections on tomato farms, in tomato greenhouses, and in tomato packinghouses and repackers.

Section 13. Subsections (1) and (2) of section 570.481, Florida Statutes, are amended to read:

570.481 Fruit and vegetable inspection fees; penalty.--

(1)(a) Each person receiving inspection services pursuant to s. 570.48 shall pay to the department an inspection fee. This fee shall cover the cost of providing the inspection service and shall be set annually by the department by rule.

(b) All fees collected by the department to cover the cost of providing the inspection service for farms or greenhouses growing tomatoes or for tomato packinghouses shall be deposited into the General Inspection Trust Fund and shall be used for tomato-related inspections, education, and research.

(2) All fees collected by the department under this section shall be deposited into the Citrus Inspection Trust Fund, except that fees collected pursuant to paragraph (1)(b) and s. 570.48(4) shall be deposited in the General Inspection Trust Fund.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Section 14. The Department of Agriculture and Consumer Services shall conduct or cause to be conducted those research projects on citrus diseases, including, but not limited to, citrus canker and citrus greening, which are recommended by the Florida Citrus Production Research Advisory Council, within the limits of appropriations made specifically for such purpose.

Section 15. This act shall take effect July 1, 2007.

===== T I T L E   A M E N D M E N T =====

Remove line(s) 3-37 and insert:

Consumer Services; amending s. 487.041, F.S.; revising the registration requirements for brands of pesticide distributed or sold in the state; providing for expiration on a specified date of requirements for annual registration; providing for future biennial registration; revising the registration fee; requiring that proceeds of the fee be deposited into the General Inspection Trust Fund and used by the department to administer ch. 487, F.S.; providing for a fee to be imposed for late registration; amending ss. 500.03 and 500.147, F.S., relating to the Florida Food Safety Act; updating references for purposes of provisions governing the sale of bottled water and the operation of bottled water plants; redefining the term "food establishment" to include tomato packinghouses; amending s. 502.012, F.S.; revising and clarifying definitions; amending s. 502.014, F.S.; revising the department's rulemaking authority concerning lowfat cottage cheese; conforming terminology; amending s. 502.053, F.S.; revising the permitting requirements for certain milk plants; deleting a provision authorizing the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

department to issue a temporary permit to milk haulers; amending  
s. 502.054, F.S.; conforming terminology; amending s. 502.091,  
F.S.; clarifying provisions governing the sale of milk and milk  
products; specifying the types of food establishments at which  
such products may be sold; providing requirements for the sale  
of cheese made from raw milk; repealing ss. 591.27-591.34, F.S.,  
relating to the designation, marking, and cutting of seed trees;  
creating the Consumer Fireworks Task Force within the department  
for certain purposes; providing legislative findings; providing  
for task force membership and selection of chair and vice-chair;  
specifying serving without compensation; providing for per diem  
and travel expenses; requiring the department to staff the task  
force; requiring a report to the Legislature by a time certain;  
providing for abolition of the task force; amending s. 570.07,  
F.S.; authorizing personnel within the various divisions of the  
department to perform regulatory and inspection services  
relating to agriculture; requiring that the department adopt  
requirements for enhancing food safety; amending s. 570.48,  
F.S.; authorizing the Division of Fruit and Vegetables to  
perform food safety inspections with respect to tomatoes;  
amending s. 570.481, F.S.; requiring that fees collected by the  
department to cover the costs of tomato-related inspections be  
deposited into the General Inspection Trust Fund and used for  
specified purposes; authorizing the Department of Agriculture  
and Consumer Services to conduct research projects on citrus  
diseases which are recommended by the Florida Citrus Production  
Research Advisory Council, within appropriations for such  
purpose;

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1                   A bill to be entitled  
2       An act relating to the Department of Agriculture and  
3       Consumer Services; amending s. 487.041, F.S.; revising the  
4       registration requirements for brands of pesticide  
5       distributed or sold in the state; providing for expiration  
6       on a specified date of requirements for annual  
7       registration; providing for future biennial registration;  
8       revising the registration fee; requiring that proceeds of  
9       the fee be deposited into the General Inspection Trust  
10      Fund and used by the department to administer ch. 487,  
11      F.S.; providing for a fee to be imposed for late  
12      registration; amending ss. 500.03 and 500.147, F.S.,  
13      relating to the Florida Food Safety Act; updating  
14      references for purposes of provisions governing the sale  
15      of bottled water and the operation of bottled water  
16      plants; amending s. 502.012, F.S.; revising and clarifying  
17      definitions; amending s. 502.014, F.S.; revising the  
18      department's rulemaking authority concerning lowfat  
19      cottage cheese; conforming terminology; amending s.  
20      502.053, F.S.; revising the permitting requirements for  
21      certain milk plants; deleting a provision authorizing the  
22      department to issue a temporary permit to milk haulers;  
23      amending s. 502.054, F.S.; conforming terminology;  
24      amending s. 502.091, F.S.; clarifying provisions governing  
25      the sale of milk and milk products; specifying the types  
26      of food establishments at which such products may be sold;  
27      providing requirements for the sale of cheese made from  
28      raw milk; repealing ss. 591.27-591.34, F.S., relating to

HB 651

2007

the designation, marking, and cutting of seed trees;  
 creating the Consumer Fireworks Task Force within the  
 department for certain purposes; providing legislative  
 findings; providing for task force membership and  
 selection of chair and vice-chair; specifying serving  
 without compensation; providing for per diem and travel  
 expenses; requiring the department to staff the task  
 force; requiring a report to the Legislature by a time  
 certain; providing for abolition of the task force;  
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (1), (2), (3), and (8) and  
 paragraphs (b) and (d) of subsection (4) of section 487.041,  
 Florida Statutes, are amended, and a new subsection (1) is added  
 to that section, to read:

487.041 Registration.--

(1)(a) Each brand of pesticide, as defined in s. 487.021,  
that is distributed, sold, or offered for sale, except as  
provided in this subsection, within this state or delivered for  
transportation or transported in intrastate commerce or between  
points within this state through any point outside this state  
must be registered in the office of the department, and such  
registration shall be renewed annually. Emergency exemptions  
from registration may be authorized in accordance with the rules  
of the department. The registrant shall file with the department  
a statement including:

HB 651

2007

57        1. The name, business mailing address, and street address  
58        of the registrant.

59        2. The name of the brand of pesticide.

60        3. An ingredient statement and a complete copy of the  
61        labeling accompanying the brand of the pesticide, which must  
62        conform to the registration, and a statement of all claims to be  
63        made for it, including directions for use and a guaranteed  
64        analysis showing the names and percentages by weight of each  
65        active ingredient, the total percentage of inert ingredients,  
66        and the names and percentages by weight of each "added  
67        ingredient."

68        (b) For the purpose of defraying expenses of the  
69        department in connection with carrying out the provisions of  
70        this part, each person shall pay an annual registration fee of  
71        \$250 for each registered brand of pesticide. The annual  
72        registration fee for each special local need label and  
73        experimental use permit is \$100. All registrations expire on  
74        December 31 of each year. If the renewal of a brand of  
75        pesticide, including the special local need label and  
76        experimental use permit, is not filed by January 31 of the  
77        renewal year, an additional fee of \$25 per brand of pesticide  
78        shall be assessed per month and added to the original fee. This  
79        additional fee may not exceed \$250 per brand of pesticide. The  
80        additional fee must be paid by the registrant before the renewal  
81        certificate for the registration of the brand of pesticide is  
82        issued.

HB 651

2007

(c) This subsection does not apply to distributors or retail dealers selling brands of pesticide if such brands of pesticide are registered by another person.

(d) This subsection expires at midnight, December 31, 2008.

(2)(a)(1) Effective January 1, 2009, each brand of ~~Every~~ pesticide, as defined in s. 487.021, that ~~which~~ is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state ~~must~~ shall ~~be~~ registered in the office of the department, and such registration shall be renewed ~~biennially~~ annually. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1.(a) The name, business mailing address, and street address of the registrant.

2.(b) The name of the brand of pesticide.

3.(c) An ingredient statement and a complete copy of the labeling accompanying the brand of the pesticide, which must ~~shall~~ conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

HB 651

2007

110        ~~(b)(2)~~ Effective January 1, 2009, for the purpose of  
 111        defraying expenses of the department in connection with carrying  
 112        out the provisions of this part, each person shall pay a  
 113        biennial ~~an annual~~ registration fee ~~of \$250~~ for each registered  
 114        brand of pesticide. The registration of each brand of pesticide  
 115        shall cover a designated 2-year period beginning on January 1 of  
 116        each odd-numbered year and expiring on December 31 of the  
 117        following year. ~~The annual registration fee for each special~~  
 118        ~~local need label and experimental use permit shall be \$100. All~~  
 119        ~~registrations expire on December 31 of each year. Nothing in~~  
 120        ~~this section shall be construed as applying to distributors or~~  
 121        ~~retail dealers selling pesticides when such pesticides are~~  
 122        ~~registered by another person.~~

123        (c) Each registration issued by the department to a  
 124        registrant for a period beginning in an odd-numbered year shall  
 125        be assessed a fee of \$500 per brand of pesticide and a fee of  
 126        \$200 for each special local need label and experimental use  
 127        permit, and the registration shall expire on December 31 of the  
 128        following year. Each registration issued by the department to a  
 129        registrant for a period beginning in an even-numbered year shall  
 130        be assessed a fee of \$250 per brand of pesticide and fee of \$100  
 131        for each special local need label and experimental use permit,  
 132        and the registration shall expire on December 31 of that year.

133        (d) All revenues collected, less those costs determined by  
 134        the department to be nonrecurring or one-time costs, shall be  
 135        deferred over the 2-year registration period, deposited in the  
 136        General Inspection Trust Fund, and used by the department in  
 137        carrying out the provisions of this chapter.

HB 651

2007

(e) If the renewal of a brand of pesticide, including the special local need label and experimental use permit, is not filed by January 31 of the renewal year, an additional fee of \$25 per brand of pesticide shall be assessed per month and added to the original fee. This additional fee may not exceed \$250 per brand of pesticide. The additional fee must be paid by the registrant before the renewal certificate for the registration of the brand of pesticide is issued.

(f) This subsection does not apply to distributors or retail dealers selling brands of pesticide if such brands of pesticide are registered by another person.

(3) The department shall adopt rules governing the procedures for the registration of a brand of pesticide ~~registration~~ and for the review of data submitted by an applicant for registration of the brand of a pesticide. The department shall determine whether the brand of a pesticide should be registered, registered with conditions, or tested under field conditions in this state. The department shall determine whether each request ~~that all requests~~ for registration of a brand of pesticide meets ~~registrations meet~~ the requirements of current state and federal law. The department, whenever it deems it necessary in the administration of this part, may require the manufacturer or registrant to submit the complete formula, quantities shipped into or manufactured in the state for distribution and sale, evidence of the efficacy and the safety of any pesticide, and other relevant data. The department may review and evaluate a registered pesticide if new information is made available that ~~which~~



HB 651

2007

166 indicates that use of the pesticide has caused an unreasonable  
 167 adverse effect on public health or the environment. Such review  
 168 shall be conducted upon the request of the Secretary ~~of the~~  
 169 ~~Department~~ of Health in the event of an unreasonable adverse  
 170 effect on public health or the Secretary ~~of the Department~~ of  
 171 Environmental Protection in the event of an unreasonable adverse  
 172 effect on the environment. Such review may result in  
 173 modifications, revocation, cancellation, or suspension of the  
 174 registration of a brand of pesticide ~~registration~~. The  
 175 department, for reasons of adulteration, misbranding, or other  
 176 good cause, may refuse or revoke the registration of the brand  
 177 of any pesticide, after notice to the applicant or registrant  
 178 giving the reason for the decision. The applicant may then  
 179 request a hearing, pursuant to chapter 120, on the intention of  
 180 the department to refuse or revoke registration, and, upon his  
 181 or her failure to do so, the refusal or revocation shall become  
 182 final without further procedure. ~~The In no event shall~~  
 183 registration of a brand of pesticide may not be construed as a  
 184 defense for the commission of any offense prohibited under this  
 185 part.

186 (4) The department, in addition to its other duties under  
 187 this section, has the power to:

188 (b) Formally request the United States Environmental  
 189 Protection Agency to require registrants of brands of pesticide  
 190 ~~pesticides~~ to provide the department with environmental test  
 191 data generated in this state or generated by simulating  
 192 environmental conditions in this state.

HB 651

2007

(d) Require a registrant who discontinues the distribution of a brand of pesticide in this state to continue the registration of the brand of the pesticide for a minimum of 2 years or until no more remains on retailers' ~~retailer's~~ shelves ~~if or 2 years after written notice to the department of date of~~ ~~discontinuance;~~ provided such continued registration or sale is not specifically prohibited by the department or the United States Environmental Protection Agency.

(8) ~~Nothing in~~ This section does not affect ~~affects~~ the authority of the department to administer the pesticide registration program under this part or the authority of the Commissioner of Agriculture to approve the registration of a brand of pesticide.

Section 2. Paragraph (d) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.--

(1) For the purpose of this chapter, the term:

(d) "Bottled water" means a beverage, as described in 21 C.F.R. part 165 (2006) ~~(1996)~~, that is processed in compliance with 21 C.F.R. part 129 (2006) ~~(1996)~~.

Section 3. Paragraph (a) of subsection (3) of section 500.147, Florida Statutes, is amended to read:

500.147 Inspection of food establishments and vehicles; food safety pilot program.--

(3) For bottled water plants:

(a) Bottled water must be from an approved source. Bottled water must be processed in conformance with 21 C.F.R. part 129 (2006) ~~(1996)~~, and must conform to 21 C.F.R. part 165

HB 651

2007

221 | (2006)~~(1996)~~. A person operating a bottled water plant shall be  
222 | responsible for all water sampling and analyses required by this  
223 | chapter.

224 |       Section 4. Section 502.012, Florida Statutes, is amended  
225 | to read:

226 |       502.012 Definitions.--The following definitions shall  
227 | apply in the interpretation and enforcement of this law:

228 |       (1) "Bulk milk pickup tanker" means a vehicle, including  
229 | the truck and tank, and necessary attachments, used by a milk  
230 | hauler to transport bulk raw milk for pasteurization from a  
231 | dairy farm to a milk plant, receiving station, or transfer  
232 | station.

233 |       (2) "Dairy farm" means any place or premises where one or  
234 | more cows, ~~or~~ goats, sheep, water buffalo, or other hoofed  
235 | mammals are kept, and from which a part or all of the milk is  
236 | provided, sold, or offered for sale ~~to a milk plant, receiving~~  
237 | ~~station, or transfer station.~~

238 |       (3) "Department" means the Department of Agriculture and  
239 | Consumer Services.

240 |       (4)~~(15)~~ "Grade 'A' pasteurized milk ordinance" means the  
241 | document entitled "Grade 'A' Pasteurized Milk Ordinance, United  
242 | States Department of Health and Human Services, Public Health  
243 | Service, /Food and Drug Administration Publication No. 229,"  
244 | including all associated appendices, as adopted by department  
245 | rule.

246 |       (5)~~(4)~~ "Imitation milk and imitation milk products" means  
247 | those foods that have the physical characteristics, such as  
248 | taste, flavor, body, texture, or appearance, of milk or milk

HB 651

2007

products as defined in this chapter and the Grade "A"  
pasteurized milk ordinance, but do not come within the  
definition ~~definitions~~ of "milk" or "milk products," and are  
nutritionally inferior to the product imitated.

(6)~~(5)~~ "Milk" means the lacteal secretion, practically  
free from colostrum, obtained by the complete milking of one or  
more healthy cows, ~~or~~ goats, sheep, water buffalo, or other  
hoofed mammals.

(7)~~(6)~~ "Milk distributor" means any person who offers for  
sale or sells to another person any milk or milk product.

(8)~~(7)~~ "Milk products" means products made with milk that  
is processed in some manner, including being whipped, acidified,  
cultured, concentrated, lactose-reduced, or sodium-reduced or  
aseptically processed, or having the addition or subtraction of  
milkfat, the addition of safe and suitable microbial organisms,  
or the addition of safe and suitable optional ingredients for  
protein, vitamin, or mineral fortification. "Milk products" do  
not include products such as evaporated milk, condensed milk,  
eggnog in a rigid metal container, dietary products, infant  
formula, or ice cream and other desserts, ~~dry milk products,~~  
~~eanned eggnog in a rigid metal container, butter, or cheese,~~  
~~except when the products are combined with other substances to~~  
~~produce any pasteurized or aseptically processed milk product.~~

(9)~~(8)~~ "Milkfat" or "butterfat" means the fat contained in  
milk.

(10)~~(9)~~ "Milk hauler" means any person who transports raw  
milk or raw milk products to or from a milk plant, receiving  
station, or transfer station.

HB 651

2007

277        (11)~~(10)~~ "Milk plant" means any place, premises, or  
278        establishment where milk or milk products are collected,  
279        handled, processed, stored, pasteurized, aseptically processed,  
280        bottled, or prepared for distribution.

281        (12)~~(11)~~ "Milk plant operator" means any person  
282        responsible for receiving, processing, pasteurizing, or  
283        packaging milk and milk products, or performing any other  
284        related operation.

285        (13)~~(12)~~ "Milk producer" means any person who operates a  
286        dairy farm and provides, sells, or offers for sale milk to a  
287        milk plant, receiving station, or transfer station.

288        (14)~~(13)~~ "Milk tank truck" means either a bulk milk pickup  
289        tanker or a milk transport tank.

290        (15)~~(14)~~ "Milk transport tank" means a vehicle, including  
291        the truck and tank, used by a milk hauler to transport bulk  
292        shipments of milk from a milk plant, receiving station, or  
293        transfer station to another milk plant, receiving station, or  
294        transfer station.

295        (16) "Raw milk" means unprocessed milk.

296        (17) "Receiving station" means any place, premises, or  
297        establishment where raw milk is received, collected, handled,  
298        stored, or cooled and is prepared for further transporting.

299        (18) "Substitute milk and substitute milk products" means  
300        those foods that have the physical characteristics, such as  
301        taste, flavor, body, texture, or appearance, of milk or milk  
302        products as defined in this chapter and the Grade "A"  
303        pasteurized milk ordinance, but do not come within the  
304        definition ~~definitions~~ of "milk" or "milk products," and are

HB 651

2007

305 | nutritionally equivalent to the product for which they are  
306 | substitutes.

307 |       (19) "Transfer station" means any place, premises, or  
308 | establishment where milk or milk products are transferred  
309 | directly from one milk tank truck to another.

310 |       (20) "Washing station" means any place, premises, or  
311 | establishment where milk tank trucks are cleaned and sanitized.

312 |       Section 5. Subsections (4) and (6) of section 502.014,  
313 | Florida Statutes, are amended to read:

314 |       502.014 Powers and duties.--

315 |       (4) The department shall define by rule "cottage cheese,"  
316 | and "dry-curd cottage cheese," ~~and "lowfat cottage cheese."~~ The  
317 | department shall periodically update these definitions to  
318 | maintain conformity with the federal definitions.

319 |       (6) The department has authority to adopt rules pursuant  
320 | to ss. 120.536(1) and 120.54 to implement and enforce the  
321 | provisions of this chapter. In adopting these rules, the  
322 | department shall be guided by and may conform to the definitions  
323 | and standards of the administrative procedures and provisions of  
324 | the Grade "A" pasteurized milk ordinance. The rules shall  
325 | include, but are not limited to:

326 |       (a) Standards for milk and milk products.

327 |       (b) Provisions for the production, transportation,  
328 | processing, handling, sampling, examination, grading, labeling,  
329 | and sale of all milk and milk products and imitation and  
330 | substitute milk and milk products sold for public consumption in  
331 | this state.

HB 651

2007

(c) Provisions for the inspection of dairy herds, dairy farms, and milk plants.

(d) Provisions for the issuance and revocation of permits issued by the department pursuant to this chapter.

Section 6. Paragraph (a) of subsection (1), subsection (2), and paragraph (a) of subsection (4) of section 502.053, Florida Statutes, are amended to read:

502.053 Permits; requirements; exemptions; temporary permits.--

(1) PERMITS.--

(a) Each Grade A milk plant, whether located in the state or outside the state, and each manufacturing milk plant, milk producer, milk hauler, milk hauling service, washing station operator, milk plant operator, milk distributor, single-service-container manufacturer, receiving station, and transfer station in the state, shall apply to the department for a permit to operate. The application shall be on forms developed by the department.

(2) REQUIREMENTS.--

(a) To obtain a permit, an applicant must satisfy all requirements that are defined by the department in rule and must agree to comply with the applicable provisions of this chapter and rules adopted ~~promulgated~~ under this chapter.

(b) All permitholders must maintain records of transactions concerning the procurement, production, and processing of milk and milk products as required in the Grade "A" pasteurized milk ordinance and grant department inspectors access to such records during all reasonable hours.

HB 651

2007

(c) In addition to the testing required in the Grade "A" pasteurized milk ordinance and its appendices, each milk plant operator in the state shall be responsible for routine testing and inspection of raw milk shipped from outside the state prior to processing and shall notify the department when such testing and inspection indicate ~~indicates~~ a violation of the standards contained in the Grade "A" pasteurized milk ordinance.

(4) TEMPORARY PERMITS.--

(a) The department may issue a temporary permit for a period not exceeding 90 days to milk producers ~~and milk haulers~~ who have submitted an application to the department and passed a preliminary inspection as required in the Grade "A" pasteurized milk ordinance.

Section 7. Section 502.054, Florida Statutes, is amended to read:

502.054 Inspection and reinspection.--The department shall establish a schedule for inspections which shall require routine inspections in accordance with the minimum requirements contained in the Grade "A" pasteurized milk ordinance and more frequent inspections or reinspections for permitholders with serious or repeated violations.

Section 8. Subsection (1) of section 502.091, Florida Statutes, is amended to read:

502.091 Milk and milk products which may be sold.--

(1) Only Grade A pasteurized milk and milk products, pasteurized manufactured milk products, and cheese made from pasteurized milk shall be sold at retail to the final consumer or to food service establishments as defined in chapter 381,



HB 651

2007

388 food establishments as defined in chapter 500, or public food  
 389 service establishments as defined in chapter 509 ~~restaurants,~~  
 390 ~~soda fountains, grocery stores, or similar establishments.~~  
 391 Cheese made from raw milk may also be sold at retail to the  
 392 final consumer or to food service establishments as defined in  
 393 chapter 381, food establishments as defined in chapter 500, or  
 394 public food service establishments as defined in chapter 509 if  
 395 the cheese is aged more than 60 days at a temperature above 35°  
 396 F.

397       (a) In an emergency, however, the department may authorize  
 398 the sale of reconstituted pasteurized milk products, or  
 399 pasteurized milk and milk products that have not been graded or  
 400 the grade of which ~~that~~ is unknown, in which case such milk and  
 401 milk products shall be appropriately labeled, as determined by  
 402 the department.

403       (b) If the department determines that milk is fit for  
 404 human consumption even though it is less than Grade A because  
 405 the producer failed to comply with the sanitation or bacterial  
 406 standards defined in this chapter, or if any specific shipment  
 407 of milk fails to comply with standards of the Grade "A"  
 408 pasteurized milk ordinance, the department may issue a permit  
 409 allowing the milk to be used in ungraded products, such as  
 410 frozen desserts, which are being processed by such milk plant.  
 411 During processing of such milk, it shall be pasteurized at a  
 412 temperature of at least 175° F. for at least 15 seconds or at  
 413 least 160° F. for at least 30 minutes.

HB 651

2007

Section 9. Sections 591.27, 591.28, 591.29, 591.30, 591.31, 591.32, 591.33, and 591.34, Florida Statutes, are repealed.

Section 10. Consumer Fireworks Task Force.--

(1) The Legislature finds that:

(a) The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;

(b) There is a need for better training and education concerning the safe use of consumer fireworks;

(c) There should be a mechanism to help local governments fund the clean up following the use of consumer fireworks on public property;

(d) Local government regulation of the agricultural uses authorized by s. 791.012 are inconsistent with legitimate agricultural purposes;

(e) There is a need for consumer education relating to safety standards in the use of consumer fireworks;

(f) There is a need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and

(g) The state would benefit from additional funding for the training and education of fire officials.

(2) (a) There is hereby created the Consumer Fireworks Task Force within the Department of Agriculture and Consumer Services for the purpose of studying the issues concerning the use of and proper use of consumer fireworks, regulation of temporary sale facilities for consumer fireworks, and regulation of the hours

HB 651

2007

and location of the use of consumer fireworks; studying funding options for fire official training and education; and studying funding options for clean-up of expended consumer fireworks products.

(b)1. The task force shall consist of seven members appointed as follows: two members appointed by the President of the Senate; two members appointed by the Speaker of the House of Representatives; two members appointed by the Commissioner of Agriculture; and one member appointed by the Chief Financial Officer.

2. Members shall choose a chair and vice-chair from its membership.

3. Members shall serve without compensation, except that members are entitled to per diem and travel expenses, pursuant to s. 112.061, incurred in the performance of their duties.

(3) Staffing for the task force shall be provided by the Department of Agriculture and Consumer Services.

(4) The task force shall review and evaluate the issues identified in paragraph (2)(a) and take public input and testimony concerning the issues. A report of the recommendations and findings of the task force shall submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2008, and the task force shall be abolished upon the transmittal of the report.

Section 11. This act shall take effect July 1, 2007.